

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **Second Notice of Public Comment Period**

LSA Document #10-659

## **DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING NPDES GENERAL PERMITS**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules and amendments to rules and amendments to rules at 327 IAC 5 and 327 IAC 15 concerning National Pollutant Discharge Elimination System (NPDES) general permits issued under 42 U.S.C. 1342. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

### **HISTORY**

First Notice of Comment Period: October 27, 2010, Indiana Register (DIN: 20101027-IR-327100659FNA).

Continuation of First Notice of Comment Period: September 7, 2011, Indiana Register (DIN: 20110907-IR-327100659FCA).

**CITATIONS AFFECTED:** 327 IAC 5-1-1.5; 327 IAC 5-1.5-1; 327 IAC 5-1.5-19.5; 327 IAC 5-1.5-19.7; 327 IAC 5-1.5-24.5; 327 IAC 5-1.5-33.5; 327 IAC 5-1.5-62; 327 IAC 5-1.5-62.5; 327 IAC 5-1.5-63.5; 327 IAC 5-1.5-63.7; 327 IAC 5-2-1.5; 327 IAC 5-2-1.6; 327 IAC 5-2-1.7; 327 IAC 5-2-1.8; 327 IAC 5-2-2; 327 IAC 5-2-3; 327 IAC 5-2-4; 327 IAC 5-2-7; 327 IAC 5-2-8; 327 IAC 5-2-17; 327 IAC 5-2-20; 327 IAC 5-3-8; 327 IAC 5-3-9; 327 IAC 5-3-12; 327 IAC 5-3-14; 327 IAC 5-3.5-9; 327 IAC 5-4-5; 327 IAC 5-4-6; 327 IAC 5-16-1; 327 IAC 5-16-5; 327 IAC 5-16-5.3; 327 IAC 5-18-4; 327 IAC 5-18-5; 327 IAC 5-18-10; 327 IAC 15-1; 327 IAC 15-2; 327 IAC 15-3; 327 IAC 15-3.5; 327 IAC 15-4; 327 IAC 15-5; 327 IAC 15-6; 327 IAC 15-7; 327 IAC 15-8; 327 IAC 15-9; 327 IAC 15-10; 327 IAC 15-11; 327 IAC 15-12; 327 IAC 15-13.

**AUTHORITY:** IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4.

### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

#### **Basic Purpose and Background**

In 1992, 1994, and 2003, the Water Pollution Control Board adopted 327 IAC 15, "NPDES General Permit Program", to provide general permits for use by selected industries in lieu of obtaining individual permits. That article was based on programs and procedures in place at the time of adoption.

The purpose of this rulemaking is to establish authority for the department to issue NPDES general permits administratively, the same way NPDES individual permits are issued, and to move the NPDES general permit requirements from 327 IAC 5 and 327 IAC 15 to the general permits themselves.

Since 327 IAC 15 was adopted, a number of changes have occurred in the NPDES program at the federal level, and the current rules have not kept pace with those changes. In addition, the Environmental Protection Agency (EPA), Region 5, Chicago, Illinois, notified the department about concerns with Indiana's NPDES permit program.

As provided in IC 13-18-1-2, the Water Pollution Control Board (board) consists of twelve members, one of whom must be a "representative of manufacturing employed by an entity that holds an NPDES major permit" (added by P.L.90-1998, SECTION 19). In March 2010, the EPA Regional Administrator notified the department that the Indiana statute conflicts with EPA regulations governing state NPDES

programs at 40 CFR 123.25(c), that provide that an NPDES permit cannot be issued by a board a member of which is employed by an entity holding an NPDES permit. (EPA Region 5 letter dated March 9, 2010)

Following the March 2010, correspondence, on June 6, 2011 the Regional Administrator notified IDEM of additional concerns with Indiana's NPDES permit program, including:

- Indiana's incorporation of EPA forms and regulations implementing the NPDES permit program is out of date and must be revised.
- Indiana's NPDES permits must provide for compliance with the Director's requests for information as provided in 40 CFR 122.41(h).
- Indiana's rules must be updated to incorporate the current editions of 40 CFR 400 to 699.

Since Indiana's NPDES general permits are "permits by rule" and are effectively issued by the board, this creates a conflict of interest that requires revision of Indiana's NPDES program. EPA recommended that the authority for issuing NPDES general permits be transferred from the board to the department. That transfer is a major goal of this rulemaking.

Another issue raised by EPA is the lack of a renewal process for NPDES general permits under the existing rules. The permit term for a general permit is five years, after which time the general permit is to be reissued in draft form to allow for comment by EPA and the public. Adding a renewal process that meets the standards of the Clean Water Act is also a goal of this rulemaking.

This rulemaking would consolidate all NPDES general permit rules in one article with the exception of general permit rules for concentrated animal feeding operations (CAFOs) proposed to be eliminated in LSA Document #09-213 (DIN: 20100811-IR-327090213SNA). The elimination of the CAFO general permit was part of a separate rulemaking to update the CAFO NPDES rules in accordance with updated federal CAFO requirements (November 20, 2008, 73 FR 70417). Those updated rules will become effective on July 1, 2012. The department intends to create as streamlined and efficient a permitting process as possible within the confines of federal and state law.

The move from "permit by rule" general permits to administratively issued general permits is intended to be a purely procedural move. That is, the regulatory requirements on affected permit holders will remain the same, except in those cases where new federal requirements have been put in place since the last amendments to the state general permit rules. Those requirements will be included in the draft general permits when they are made available for public comment as required under the CWA.

IDEM will be working to assure a smooth transition from the general permits by rule to administratively-issued general permits so that no gap in coverage occurs.

#### **IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

#### **Potential Fiscal Impact**

This rule transfers authority to issue NPDES general permits from the Water Pollution Control Board to the department. These provisions are administrative and do not establish new permit requirements. Because this rule does not establish new permit requirements, this rule will not result in any new costs or cost savings. Any new costs or cost savings resulting from new provisions added to general permits to make them consistent with current federal permit requirements will result from those federal requirements and not from the provisions of this rule. As a result, the net economic impact of this rule to regulated entities is \$0.

#### **Public Participation and Work Group Information**

No work group is planned for this rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Steve Mojonier, Rules Development Branch, Office of Legal Counsel at (317) 233-1655 or (800) 451-6021 (in Indiana).

## **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from October 6, 2010, through November 5, 2010, regarding new rules and amendments to rules in 327 IAC 15 concerning NPDES general permits. IDEM received comments from the following commentors:

Justin T. Schneider, Indiana Farm Bureau, Inc. (IFB)

Stan Pinegar, Indiana Utility Group (IUG)

Mark I. Shublak, Ice Miller LLP, representing the Agribusiness Council of Indiana (ACI)

William C. Wagner, Taft Stettinius & Hollister LLP, representing the Indiana Water Quality Coalition and the Indiana Manufacturers Association (IWQC/IMA)

Joshua D. Trenary, Indiana Pork Advocacy Coalition (IPAC)

Jessica Dexter, Environmental Law & Policy Center, with Angela Hamm, Hoosier Environmental Council and Bowden Quinn, Sierra Club (ELPC)

David L. Hatchett, Hatchett & Hauck, LLP, representing Steel Dynamics, Inc. (SDI)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The agency should consider the use of general permits for livestock operations in the future when the opportunity presents itself. (IFB)

*Response:* This comment involves another rulemaking action and is outside the scope of this rulemaking. IDEM may consider issuing a CAFO general permit in the future should the need arise.

*Comment:* To correct the problem that a representative of an NPDES permit holder serves on the board, we suggest that revision of the makeup of the board be considered. This could be done by ensuring that no board appointee receive a significant portion of their income from an NPDES permit holder or an applicant. (IFB)

*Response:* This comment would require legislative action and is outside the scope of this rulemaking. Appointments to the environmental boards are within the statutory authority of the Governor, not the department [See IC 13-18-1-2].

*Comment:* We do not oppose moving the adoption of general permits to the agency. The board should serve in an advisory role to the agency. The process could stay much the same whereby the agency would present the proposed general permit to the board who could conduct the public hearing process and make recommendations to IDEM with respect to adopting general permit language. Since the board would only serve in a non-binding position, this would appear to satisfy EPA's concerns and comply with federal regulations. (IFB)

*Response:* Currently, Indiana law establishes the board as a policy-setting body for the department, not merely as an advisor (IC 13-18-3-3). Board members, as members of the public, will be free to provide comment on all draft general permits.

*Comment:* A separate modification is that the board could take a more active role in the drafting of the general permit which would be adopted by the agency. Either way, it would provide a public forum for comment and debate on the proposed general permits. (IFB)

*Response:* This comment would not satisfy the objection by EPA because the board would still be determining the actual terms and conditions of the permits. Also, changing the relationship between the board and the department would require legislative action and is outside the scope of this rulemaking. A public forum of notice and comment will be provided for all draft general permits.

*Comment:* We urge IDEM to establish a clear policy by which the public, including the regulated community, could provide input into the development of a rule. By providing a clear mechanism for public input into the adoption of the general permit, the opportunity to comment will be clear to interested parties. (IFB)

*Response:* This rulemaking is being done under IC 13-14-9 which provides numerous opportunities for public notice and comment. Those opportunities are provided in the context of the Water Pollution Control Board. This rulemaking proposes that IDEM issue general permits without board action, as directed by EPA in accordance with 40 CFR §123.25(c). Involvement by the board in drafting permit language violates that provision. Section 402 of the CWA requires the department to provide notice of and opportunity for the public to comment on each NPDES permit. The department is required to follow that process.

*Comment:* The commentor supports a renewal process by which the public can comment. The process must be transparent and provide set time frames for when changes must be made to the general permit, as well as the time periods for when notice must be filed and adoption must take place. The period of a general permit must extend beyond periods of five years. (IFB)

*Response:* Section 402(b)(1)(B) specifies that NPDES permits “are for fixed terms not exceeding five years”.

*Comment:* The commentor does not believe that agricultural applications of pesticides are covered by the NPDES permitting program. (IFB)

*Response:* Neither the EPA final rule or the Sixth Circuit Court of Appeals decision specifically included agricultural application of pesticides to terrestrial crops under an NPDES general permit program. A pesticide general permit has already been administratively issued by IDEM.

*Comment:* IDEM should amend the existing Article 5 NPDES rules [327 IAC 5] to incorporate regulations for general permitting similar to those adopted by West Virginia at 40 C.S.R. 70, Section 13.6. General Permits. (IUG)

*Response:* Adoption of permit requirements by the Water Pollution Control Board as currently constituted under Indiana law would not comply with 40 CFR §123.25(c).

*Comment:* IDEM should consider implementing antidegradation for general permits by implementing a policy revision to require that new and reissued NPDES general permits be evaluated to consider the potential for significant degradation as a result of the permitted activity. Regulated activities covered under an NPDES general permit would not be required to undergo a Tier 2 antidegradation review as part of the permit registration process. Regulated activities with NPDES permits that will degrade higher tier waters would have to comply with an antidegradation review. (IUG)

*Response:* This comment involves another rulemaking action and is outside the scope of this rulemaking.

*Comment:* Regulated activities that qualify for coverage under a Corps of Engineers regional or nationwide permit under section 404 of the Clean Water Act that has been certified by the state under section 401 of the CWA should not be required to undergo a Tier 2 antidegradation review unless an individual section 401 permit is required. (IUG)

*Response:* This comment involves another rulemaking action and is outside the scope of this rulemaking.

*Comment:* Regulated activities that have section 401 certification that will degrade waters higher than Tier 2 must comply with antidegradation review requirements for that category of water. (IUG)

*Response:* This comment involves another rulemaking action and is outside the scope of this rulemaking.

*Comment:* IDEM should include in its antidegradation rule a requirement to develop guidance which addresses these implementation procedures and provides additional information to persons conducting regulated affected by these procedures. (IUG)

*Response:* This comment involves another rulemaking action and is outside the scope of this rulemaking.

*Comment:* IDEM will be issuing new regulations regarding NPDES permits for pesticides. While agriculture has not been directly focused on in the EPA Draft Pesticide General Permit, the commentor believes that IDEM intends to regulate agricultural application of pesticides in this action. (ACI)

*Response:* IDEM has not included agricultural application of pesticides in a pesticide general permit. The IDEM administratively issued pesticide general permit does not extend to normal agricultural pesticide use.

*Comment:* To the extent that an NPDES permit will be required for pesticide uses, the commentor agrees that all such uses should be covered by a general permit even though the commentor believes that application of CWA requirements to pesticides was never intended by Congress. (ACI)

*Response:* The Sixth Circuit Court of Appeals disagreed in *National Cotton Council et al. v. EPA*, however that decision focused on the two pesticide uses covered in the EPA final rule "Application of Pesticides to Waters of the United States in Compliance with FIFRA," (November 27, 2006, 71 FR 68483). Agricultural application of pesticides was not included in that final rule.

*Comment:* The commentor notes that requiring an NPDES permit for pesticide applications is a departure from Congressional intent as well as current practice. Commentor believes that agricultural pesticide use should not require any NPDES permit. Any proposed NPDES regulation should provide that any application of FIFRA regulated material by a licensed applicator that has been done in accordance with FIFRA should be deemed as meeting the requirements of a general permit issued by IDEM. (ACI)

*Response:* IDEM has not included agricultural application of pesticides in the pesticide general permit it issued on October 31, 2011.

*Comment:* The current proposed rule and EPA pesticide general permit appear to disregard both IDEM's and EPA's longstanding interpretations that pesticide use for agricultural purposes is not regulated by the Clean Water Act. To the extent the Proposed Rule is meant to constitute notice of a NPDES permit for pesticides or other FIFRA regulated material, the Proposed Rule is inconsistent with the requirement of "ascertainable standards" and fails to provide adequate notice of the actual standards that will be used for this type of permit. In Indiana, "all administrative decisions must be in accord with previously stated ascertainable standards." At this time, an applicant seeking a general or individual NPDES permit with regard to the use of pesticides cannot know, with any reasonable certainty, what objective standards IDEM will utilize under the Proposed Rule, what the proposed permit terms would be, or how long it would take to obtain all necessary permits. The commentor disagrees with the EPA conclusion that if it determines that the pesticide general permit, or any other NPDES permit, should apply to pesticide uses other than those specifically mentioned in the [draft] pesticide general permit then no further notice is necessary. Before a pesticide use not listed in the [draft] pesticide general permit is deemed to be regulated by the NPDES program, those [regulated entities] that EPA proposes to regulate should be given a fair opportunity to understand and comment upon any rules or regulations that might apply to them. Despite EPA's contention that there will be no anticipated adverse economic impacts on farmers, ranchers and applicators from the [EPA] pesticide general permit, the commentor believes the implementation of the EPA pesticide general permit, as written, and the incorporation of similar requirements by IDEM into its NPDES permitting system, will trigger many costly consequences. Because Indiana has chosen to have pesticide enforcement fall under the Indiana State Chemist and Seed Commissioner (OISC), with enforcement of the Clean Water Act belonging to IDEM, this dual-agency regulation of pesticides will only complicate the regulation process and add to the financial burden on state and local agencies, municipalities, farmers and operators. The commentor is concerned about the costs of integrated pest management and surveillance for operators. (ACI)(9) IDEM and EPA should acknowledge in any NPDES permit that roadside ditches, swales and other

upland conveyances potentially encountered by terrestrial (land based) applications are not subject to the Clean Water Act or its permit. There should be an explicit acknowledgement that NPDES regulations do not apply to irrigation return flows, agricultural storm water runoff, or spray drift from terrestrial crop protection applications, regardless of whether such agricultural products are located “near” waters of the United States or not, as provided in section 502(14) of the Clean Water Act. Currently there is no statutory definition of what is meant by “near” waters of the United States. IDEM needs to clarify what constitutes “near” a water of the United States and what is an “unavoidable discharge”. The commentor requests that IDEM implement a rule that states that pesticide discharges will only be regulated if they are directly to a navigable water or to a federally regulated wetland. The commentor believes that to the extent an NPDES permit will be required by IDEM for pesticide use in Indiana, the OISC must be involved in this permitting and regulatory process either directly or through a Memorandum of Understanding between IDEM and the OISC. The commentor notes the existence of the Indiana Pesticide State Management Plan [dated October 30, 1995] based on authority in IC 13-7 [now recodified in IC 13-13-5-1(1) and IC 13-18-2] and IC 15-3 and notes the dual regulation of pesticides by IDEM and OISC established in pesticide management plan, memorandum of understanding, and state rules. Farmers and agricultural business may find themselves in a situation where one application of pesticides may result in penalties from both the OISC and IDEM for the same action. Any NPDES regulation pertaining to FIFRA regulated materials should provide that any application of a FIFRA regulated material in accordance with FIFRA by an applicator licensed by OISC would be deemed to have been done in compliance with, and under the protection of, a general permit promulgated by IDEM or the OISC. Most pesticides leave residues and metabolites after their application. EPA’s [draft] pesticide general permit and IDEM’s proposed incorporation of this proposed rule into its general permitting program, essentially classifies all pesticides as pollutants whose application near water will require an NPDES permit. Thus the pesticide general permit and proposed rule will have an impact on every farmer who applies pesticides that may eventually end up in a water of the U.S. Under the currently proposed [EPA] pesticide general permit and thus IDEM’s “proposed rule”, lawful pesticide applications resulting in residue or excess will now require some form of NPDES permit. The agricultural community in Indiana is concerned about the impact of IDEM’s “proposed rule” and the potential vulnerability of the agricultural community to lawsuits. Farmers are concerned with the time it could take to develop a general permit. Farmers have never needed or had the opportunity to obtain an NPDES permit for any pesticide or other FIFRA regulated application. Farmers who have been faced with a notice of intent to sue for spray drift applications were unable to obtain an NPDES permit directly from EPA, from IDEM, or from OISC. As a result, farmers have been, and will continue to be, vulnerable to citizen suits or threats from activists to stop using pesticides. The commentor is concerned that the regulatory restrictions of an NPDES permit will prevent effective pest control. Any delay in issuing permit could have a negative influence on the farming and agricultural industries, and without any definite protocols in place, this will surely happen. There are also grave concerns regarding the timing of any NPDES permitting process for pesticides since thousands of pesticide applicators will be requesting permits at the same time. Adding another regulatory requirement will slow real time production decisions made by farmers every day, resulting in greater use of pesticides. Farmers have a general inability to predict the need for a permit. The commentor describes a number of critical pest control timing issues faced by farmers and states that the need for an NPDES permit, per IDEM’s “proposed rule”, would very likely delay the farmer’s options under these very common circumstances. Regulatory requirements will push farmers to seek non-regulatory options for controlling pests whenever and wherever possible. Some farmers use natural pest control methods and integrated pest management. In order to minimize use of pesticides, integrated pest management requires quick action within hours, not delay, once preventative methods fail. Many farmers will not know how to obtain a permit or find that integrated pest management is complicated or rendered useless by a cumbersome and time consuming permit process. Permits will increase the number of pesticides used because they will lock farmers into “preventative” applications

that comply with their IDEM approved permit. They will have no viable alternatives other than to comply in accordance with their permits. Since IDEM issued NPDES permits will increase the cost of controlling weeds, this increased cost will force farmers to abandon no-till farming techniques and increase mechanical plowing with resulting increased soil erosion and release of organic carbon. (ACI)

*Response:* IDEM issued the pesticide general permit on October 31, 2011. It is not part of this rulemaking.

*Comment:* The first notice of comment period states that IDEM's NPDES general permit rule program has not kept pace with changes in the NPDES program occurring at the federal level. The IWQC and IMA expect that any such changes will be noticed separately since they are not specifically identified in the three alternatives proposed in the notice. (IWQC/IMA)

*Response:* Since the terms and conditions of a general permit would be an administrative action, they will be noticed under 40 CFR 124. Adoption of permit requirements by the Water Pollution Control Board as currently constituted under Indiana law would not comply with 40 CFR §123.25(c).

*Comment:* The commentor agrees that having a member of the [Water Pollution Control] Board (Board) employed by an entity that holds an NPDES permit is inconsistent with EPA regulations [40 CFR 123.35(c)] and does not disagree with IDEM's recommendation that the authority for issuing NPDES general permits be transferred from the board to the commissioner. (IWQC/IMA)

*Response:* IDEM agrees.

*Comment:* The commentor does not object to amending existing rules or new rules to specifically add five year expiration dates to renewed NPDES general permit as required by CWA section 402(b)(1)(B), provided the conditions of the permit continue in force and the permittee has submitted a timely and complete application as provided in 40 CFR 122.6(a). (IWQC/IMA)

*Response:* The department must follow federal requirements for permit renewals.

*Comment:* The notice states that EPA has raised an issue with IDEM's lack of a renewal process for NPDES general permits. The commentor believes that IDEM will attempt to add broader public review requirements than those needed for permit renewals. The commentor objects to any effort by IDEM to modify the overall public review procedures to NPDES permitting through this notice since the clear implication of the notice aims solely at the public review procedures employed during the renewal process. (IWQC/IMA)

*Response:* IDEM intends to provide the amount of public review of permits required under the Clean Water Act.

*Comment:* The commentor notes that IDEM's procedures for issuing NPDES general permits already contain substantial opportunities for public review and comment and does not believe any additional public review procedures need to be imposed. Adopting such procedures for general permits would substantially burden the regulated community and IDEM. (IWQC/IMA)

*Response:* There are not substantial opportunities for review and comment as the rule language has not been opened for several years. IDEM disagrees that providing the required 30 day comment period on general permit language once every five years will result in a substantial burden on anyone.

*Comment:* The commentor reminds IDEM that the NPDES general permit rules should comply with the rulemaking requirement in IC 4-22-2-19.5(a). (IWQC/IMA)

*Response:* IDEM agrees.

*Comment:* The commentor understands that Indiana's general permit program conflicts with the requirements in 40 CFR 123.25(c) and must be modified. However, the commentor disagrees that updated federal confined animal feeding operations (CAFO) requirements necessitate the elimination of the CAFO general permit in Indiana. (IPAC)

*Response:* This comment involves another rulemaking action (LSA Document #09-213) and is outside the scope of this rulemaking. The CAFO general permit was eliminated in amended rules that become effective on July 1, 2012.

*Comment:* In transferring [permit] issuing authority from the Board to the department, the commentor urges caution against any decrease in the participation of the general public and the regulated community in the development of general permits. As the Board is uniquely suited to address the concerns of both the general public and the regulated community in a public forum, this transition of authority should include the development of procedures by which the Board could facilitate this process and provide input to the “rulemaking agency” (department). (IPAC)

*Response:* Development of permit requirements and conditions by the Water Pollution Control Board as currently constituted under Indiana law, with subsequent direction to IDEM under IC 13-18-3-3, would not comply with 40 CFR §123.25(c).

*Comment:* The commentor supports the development of a renewal process by which the public and the regulated community have the ability to provide input, but proposed changes to a general permit during this process must be appropriately scrutinized. Sweeping changes in a permit at every renewal date would create undue burden on the regulated community. (IPAC)

*Response:* It is doubtful that “sweeping changes” will occur at every renewal date. However, to avoid invalidating those renewed permits, the renewed permit must remain at least as stringent as, and as broad in scope as, the corresponding federal permit. All NPDES permits must keep pace with changes in the national permitting process, which is one major deficiency in Indiana’s NPDES program noted by EPA.

*Comment:* The commentor stated that public participation during the development of a general permit, during the renewal process, or during the public review of a nutrient management plan should be encouraged, but only within appropriate parameters. The commentor proposed several limitations on the scope of public participation in a general permit. (IPAC)

*Response:* Public participation in development of NPDES general permits is governed by 40 CFR 122 through 40 CFR 124. Those procedures will be followed during development of the general permits.

*Comment:* The commentor supports rulemaking abolishing Indiana’s general permit-by-rule system that does not comply with the legal requirements of the NPDES program. Discharges currently authorized under 327 IAC 15 are illegal discharges subject to enforcement under the NPDES program. To the extent that general permits are appropriate and necessary for IDEM to administer the NPDES program, this rulemaking to delegate authority to issue proper NPDES permits to IDEM must proceed. Alternative 1 is the only option that would begin to address the legal deficiencies of the current general permit-by-rule. Alternatives 2 and 3 would not correct even the problems identified in the rulemaking (improper constitution of Board; permits effective for more than 5 years). State and federal law requires the Board to proceed with alternative 1 and transfer permit authority to IDEM. (ELPC)

*Response:* IDEM agrees that this rulemaking is necessary to comply with federal law.

*Comment:* While the commentor supports alternative 1, the proposed scope of the rule does not go far enough to remedy the substantial shortcomings of Indiana’s attempt to issue general permits under the NPDES program. The Board should (1) revisit the appropriateness of regulating certain types of discharges under a general permit program, (2) clarify that IDEM has full authority to issue permits that conform to NPDES program requirements, (3) clarify that IDEM has authority to require and review all information necessary to carry out its NPDES duties, and (4) undertake emergency action to transition the hundreds of illegal discharges currently authorized under Article 15 to legitimate NPDES permits. (ELPC)

*Response:* IDEM disagrees that illegal discharges are authorized under existing general permits.

*Comment:* Not all categories of point source discharges authorized under the current Article 15 program are properly regulated by general permit. The Board should carefully examine the discharges currently authorized under Article 15 [327 IAC 15] permits-by-rule to ensure the classes or categories of discharges are appropriately regulated by NPDES general permits. The commentor cites discharges from coal mining as a type of discharge that should not be authorized under a general permit. (ELPC)

*Response:* The purpose of this rulemaking is to transfer the issuance of NPDES general permits from the rulemaking process to an administrative process to resolve EPA concerns, including the inherent conflict of interest the Water Pollution Control Board has in issuing General Permits. That same conflict would exist if the Water Board were to--through this rule making--decide which types of permits IDEM could or could not issue through a General Permit. That is why this rule is limited to ensuring IDEM issues general permits in the same manner it issues individual permits. More specifically regarding Coal Mine General Permits, state law requires IDEM to issue a general permit. This rule will not alter the fact that with any specific facility, IDEM can decide whether or not it will allow coverage under a General Permit.

*Comment:* Substantive problems with the current permits-by-rule under Article 15 must be addressed before NPDES permits may be issued. The terms of existing Rule 7 [327 IAC 15-7] are insufficient to comply with state or federal law. Simply adopting the terms of existing Rule 7 into an NPDES permit will not correct the substantive shortcomings of IDEM's program to regulate coal mining discharges. Rule 7 does not (1) allow for water quality based effluent limits or (2) consider impacts of pollutants associated with coal mining, and must require (3) an antidegradation review and (4) adequate monitoring to ensure permit and water quality standard compliance. Since IDEM contends that it cannot consider the nature of a receiving water or predicted pollution from a mine, this rulemaking should make it clear that the department has the authority and duty to comply with all NPDES legal requirements. (ELPC)

*Response:* This rulemaking is limited to transferring authority to IDEM to issue General Permits administratively. When IDEM issues a Coal Mine General Permit, it will, like every other NPDES permit, be subject to public notice. At that time, IDEM will take comment on the specific provisions of the General Permit.

*Comment:* New rules for NPDES general permits must require IDEM to collect necessary information from permit applicants. Under the current rules, IDEM has argued that it doesn't have authority to collect information from the applicant, or to even review its own information, regarding the proposed discharge, condition of the receiving waters, alternatives that could be implemented or conditions warranting an individual permit. This rulemaking should make it clear (1) that IDEM must develop a notice of intent (NOI) form that requires information about the quality of the receiving waters, the predicted chemical composition of the proposed discharges, and an antidegradation analysis for any new or increased discharges, and (2) that IDEM has the duty to review information in its control regarding condition of the receiving waters and the compliance record of the applicant. (ELPC)

*Response:* This rulemaking is intended to ensure that IDEM has the authority to issue General Permits administratively. As you are aware, several different types of General Permits currently exist and therefore the requirements regarding the submission of an NOI will be sufficiently broad to allow IDEM to require information it requires to evaluate eligibility for coverage under each general permit.

*Comment:* Emergency action is necessary to address the current illegal discharges authorized under Article 15 [327 IAC 15]. Discharges to waters of the United States that are not subject to a valid NPDES permit are illegal under the Clean Water Act. Indiana's current general permit-by-rule program does not authorize discharges subject to valid NPDES permits, therefore the discharges authorized under this program are and continue to be illegal discharges subject to enforcement action. The timeline for adoption of valid NPDES permits will allow these discharges to continue for at least another year, so

delays in the rulemaking process will not be tolerated. The commentor recommends that the rulemaking impose a moratorium on new or increased discharges authorized under 327 IAC 15 until the required valid NPDES general permits can be issued. In the meantime, proposed discharges can be addressed in individual permits. When the NPDES permits are issued, all existing discharges authorized under 327 IAC 15 must be immediately transitioned to coverage by the appropriate general or individual permits. If the board finds that certain discharges, such as from coal mines, are not appropriately regulated by general permits, the transition to individual permits can begin sooner. (ELPC)

*Response:* IDEM is working expeditiously to pass this rule and IDEM will work to issue General Permits that meet the requirements of the Clean Water Act. At this time, IDEM has no plans to impose a moratorium on new or increased discharges under article 15, and will continue to evaluate applications for coverage under existing General Permits.

*Comment:* The commentor objects to the discussion of federal rules that are not effective in Indiana and not applicable to Indiana sources. The EPA Multi-Sector General Permit (MSGP) is not applicable to any facilities in Indiana. The commentor understands that this rulemaking is narrowly tailored to address EPA's March 9, 2010 comments which only discussed (1) a perceived conflict of interest by the board to issue NPDES general permits, and (2) the lack of a renewal process for NPDES general permits under the existing rule. The MSGP has no connection to this targeted rulemaking and should not be cited in the rulemaking action. (SDI)

*Response:* IDEM is considering modeling the permits for industrial stormwater discharges on the current EPA multi-sector general permit. This notice solicited comment on use of the EPA construction general permit and the MSGP as models for Indiana NPDES general permits. In any case, Indiana's permit requirements cannot be less stringent than the corresponding federal requirements.

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF THE FIRST COMMENT PERIOD**

IDEM requested public comment from September 8, 2011, through October 7, 2011, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the continuation of the first public comment period.

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Doc. #10-659 [NPDES General Permits]  
Attn: Steve Mojonni  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Ave. MC 65-45  
Indianapolis, Indiana 46204-2251.

(2) By facsimile to (317) 233-5517. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 233-8903.

(3) By electronic mail to [smojonni@idem.in.gov](mailto:smojonni@idem.in.gov). To confirm timely receipt of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed or time stamped no later than [*publication date plus 30 days*]. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules Development Branch, Office of Legal Counsel, (317) 233-1655 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. 327 IAC 5-1-1.5 IS AMENDED TO READ AS FOLLOWS:

##### **327 IAC 5-1-1.5 Prohibitions**

Authority: IC 13-11-2-99; IC 13-13-5-1; IC 13-22-2-3

Affected: IC 13-18-3

Sec. 1.5. Except as provided in ~~327 IAC 15-14~~ **327 IAC 15-3.5**, the ~~point source~~ discharge of sewage, treated or untreated, from a dwelling or its associated residential sewage disposal system, to the waters of the state is prohibited.

*(Water Pollution Control Board; 327 IAC 5-1-1.5; filed Nov 13, 1995, 5:00 p.m.: 19 IR 660; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1563; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 5-1.5-1 IS AMENDED TO READ AS FOLLOWS:

##### **327 IAC 5-1.5-1 Definitions**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-12-3-1; **IC 13-18-3-15**; IC 13-18-4

Sec. 1. **The definitions in the materials incorporated by reference in this article, 40 CFR 122, IC 13-11-2, IC 13-12-3-1, 327 IAC 1, 327 IAC 2-1, and 327 IAC 2-1.5 apply throughout this article.** In addition to the definitions contained in **IC 13-11-2**, IC 13-12-3-1, ~~IC 13-11-2~~, 327 IAC 1, 327 IAC 2-1, and 327 IAC 2-1.5, the definitions in this rule apply throughout this article.

*(Water Pollution Control Board; 327 IAC 5-1.5-1; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1412; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 5-1.5-19.5 IS ADDED TO READ AS FOLLOWS:

##### **327 IAC 5-1.5-19.5 "Existing source" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 19.5. "Existing source" means any source which is not a new source or a new discharger.**

*(Water Pollution Control Board (327 IAC 5-1.5-19.5)*

SECTION 1. 327 IAC 5-1.5-19.7 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-1.5-19.7 "Facilities or equipment" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 19.7. "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.**

*(Water Pollution Control Board (327 IAC 5-1.5-19.7))*

SECTION 1. 327 IAC 5-1.5-24.5 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-1.5-24.5 "Individual NPDES permit" or "individual permit" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 24.5. "Individual NPDES permit" means a NPDES permit issued to one (1) facility which contains requirements specific to that facility. An individual NPDES permit is not a general permit.**

*(Water Pollution Control Board; 327 IAC 5-1.5-24.5)*

SECTION 1. 327 IAC 5-1.5-37.5 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-1.5-37.5 "Notice of intent" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 37.5 "Notice of intent" means a written notification indicating a person's intention to comply with the terms of a specified general permit in lieu of applying for an individual NPDES permit and includes information as required by the applicable general permit.**

*(Water Pollution Control Board; 327 IAC 5-1.5-37.5)*

SECTION 1. 327 IAC 5-1.5-62.5 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-1.5-62.5 "Site" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 62.5. "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.**

*(Water Pollution Control Board (327 IAC 5-1.5-62.5))*

SECTION 1. 327 IAC 5-1.5-63.5 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-1.5-63.5 "Source" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 63.5. "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.**

*(Water Pollution Control Board (327 IAC 5-1.5-63.5))*

SECTION 1. 327 IAC 5-1.5-63.7 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-1.5-63.7 "Storm water" defined**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

**Sec. 63.5. "Storm water", as defined in 40 CFR 122.26(b)(13), means storm water runoff, snow melt runoff, and surface runoff and drainage.**

*(Water Pollution Control Board; 327 IAC 5-1.5-63.7)*

SECTION 1. 327 IAC 5-2-1.5 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-1.5 Incorporation by reference**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 1.5. **(a)** The following materials have been ~~are~~ incorporated by reference: in this article, each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

(1) Clean Water Act (CWA), 33 U.S.C. 1251 et seq., in effect on July 1, 2004, is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(2) All Federal Registers listed in this rule are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(3) Code of Federal Regulations (40 CFR 100–149, 40 CFR 400–424, and 40 CFR 425–699), in effect on July 1, 2004, are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(4) Standard Form A Municipal (EPA Form 7550-22), available from the U.S. Environmental Protection Agency, Office of Water Resource Center, 401 M Street, S.W., Washington, D.C. 20460, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(5) Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.), available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

Part	Title of Part	Revision date
40 CFR 125	Criteria and Standards for the National Pollutant Discharge Elimination System	July 1, 2011
40 CFR 130	Water Quality Planning and Management	July 1, 2011
40 CFR 133	Secondary Treatment Regulation	July 1, 2011

40 CFR 136	Guidelines Establishing Test Procedures for the Analysis of Pollutants	July 1, 2011
40 CFR 403	General Pre-Treatment Regulations for Existing and New Sources of Pollution	July 1, 2009
40 CFR 405	Dairy Products Processing	July 1, 2009
40 CFR 406	Grain Mills Point Source Category	July 1, 2009
40 CFR 407	Canned and Preserved Fruits and Vegetables Processing	July 1, 2009
40 CFR 408	Canned and Preserved Seafood (Seafood Processing)	July 1, 2009
40 CFR 411	Cement Manufacturing	July 1, 2009
40 CFR 412	Concentrated Animal Feeding Operations (CAFO) Point Source Category	July 1, 2009
40 CFR 413	Electroplating Point Source Category	July 1, 2009
40 CFR 414	Organic Chemicals, Plastics and Synthetic Fibers	July 1, 2009
40 CFR 415	Inorganic Chemicals Manufacturing Point Source Category	July 1, 2009
40 CFR 417	Soap and Detergent Manufacturing Point Source Category	July 1, 2009
40 CFR 418	Fertilizer Manufacturing Point Source Category	July 1, 2009
40 CFR 419	Petroleum Refining Point Source Category	July 1, 2009
40 CFR 420	Iron and Steel Manufacturing Point Source Category	July 1, 2009
40 CFR 421	Nonferrous Metals Manufacturing Point Source Category	July 1, 2009
40 CFR 423	Steam Electric Power Generating Point Source Category	July 1, 2009
40 CFR 424	Ferroalloy Manufacturing	July 1, 2009
40 CFR 425	Leather Tanning and Finishing Point Source Category	July 1, 2011
40 CFR 426	Glass Manufacturing Point Source Category	July 1, 2011
40 CFR 427	Asbestos Manufacturing	July 1, 2011
40 CFR 428	Rubber Manufacturing Point Source Category	July 1, 2011
40 CFR 429	Timber Products Processing Point Source Category	July 1, 2011
40 CFR 430	Pulp, Paper and Paperboard Point Source Category	July 1, 2011
40 CFR 432	Meat and Poultry Products	July 1, 2011
40 CFR 433	Metal Finishing Point Source Category	July 1, 2011
40 CFR 434	Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards	July 1, 2011
40 CFR 435	Oil and Gas Extraction Point Source Category	July 1, 2011
40 CFR 437	Centralized Waste Treatment Point Source Category	July 1, 2011
40 CFR 439	Pharmaceutical Manufacturing Point Source Category	July 1, 2011
40 CFR 442	Transportation Equipment Cleaning Point Source Category	July 1, 2011
40 CFR 443	Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving and Roofing Materials (Tars and Asphalt) Point Source Category	July 1, 2011
40 CFR 444	Waste Combustors Point Source Category	July 1, 2011
40 CFR 445	Landfills	July 1, 2011
40 CFR 446	Paint Formulating Point Source Category	July 1, 2011
40 CFR 447	Ink Formulating Point Source Category	July 1, 2011
40 CFR 451	Concentrated Aquatic Animal Production (Aquaculture)	July 1, 2011
40 CFR 454	Gum and Wood Chemicals	July 1, 2011
40 CFR 455	Pesticide Chemicals	July 1, 2011
40 CFR 457	Explosives Manufacturing	July 1, 2011
40 CFR 458	Carbon Black Manufacturing Point Source Category	July 1, 2011
40 CFR 460	Hospitals	July 1, 2011
40 CFR 461	Battery Manufacturing Point Source Category	July 1, 2011

40 CFR 464	Metal Molding and Casting Point Source Category	July 1, 2011
40 CFR 465	Coil Coating Point Source Category	July 1, 2011
40 CFR 466	Porcelain Enameling Point Source Category	July 1, 2011
40 CFR 467	Aluminum Forming Point Source Category	July 1, 2011
40 CFR 468	Copper Forming Point Source Category	July 1, 2011
40 CFR 469	Electrical and Electronic Components Point Source Category	July 1, 2011
40 CFR 471	Nonferrous Metals Forming and Metal Powders Point Source Category	July 1, 2011
40 CFR 501	State Sludge Management Program Regulations	July 1, 2011
40 CFR 503	Standards for the Use or Disposal of Sewage Sludge	July 1, 2011

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in this section.

(c) The Code of Federal Regulations is available:

(1) electronically at <http://www.gpo.gov/fdsys/>; and

(2) in paper copies from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or online at <http://bookstore.gpo.gov/>.

The incorporated materials are available for public review at the department of environmental management, Office of Water Quality, Permits Branch, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(d) Where exceptions to materials incorporated by reference are necessary, these exceptions will be noted in section 1.8 of this rule or otherwise identified in this article.

(e) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.

*(Water Pollution Control Board; 327 IAC 5-2-1.5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)*

SECTION 1. 327 IAC 5-2-1.6 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-2-1.6 Consistency with federal references**

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

**Sec. 1.6. The department shall issue NPDES permits consistent with the following:**

Part	Title of Part	Revision date
40 CFR 122	EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	July 1, 2011
40 CFR 123	State Program Requirements	July 1, 2011
40 CFR 124	Procedures for Decisionmaking	July 1, 2011
40 CFR 131	Water Quality Standards	July 1, 2011

*(Water Pollution Control Board; 327 IAC 5-2-1.6)*

SECTION 1. 327 IAC 5-2-1.7 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-2-1.7 Conversion of federal terms**

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

**Sec. 1.7.** When used in 40 CFR, as incorporated by reference in this article, substitute the following unless otherwise indicated:

- (1) "Administrator" means the commissioner of the Indiana department of environmental management.
- (2) "Agency" means the Indiana department of environmental management.
- (3) "Director" means the commissioner of the Indiana department of environmental management.
- (4) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.
- (5) "Water Management Division Director" means the commissioner.
- (6) "State", "authorized state", "approved state", and "approved program" means Indiana.
- (7) "United States" means the state of Indiana.

*(Water Pollution Control Board; 327 IAC 5-2-1.7)*

SECTION 1. 327 IAC 5-2-1.8 IS ADDED TO READ AS FOLLOWS:

**327 IAC 5-2-1.8 Exceptions and additions**

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

**Sec. 1.8.** The following are exceptions and additions to materials incorporated by reference in section 1.5 of this rule. Delete 40 CFR 122.3 and insert the following: The following discharges do not require an NPDES permit:

- (1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the waters of the state for the purpose of mineral or oil exploration or development.
- (2) Discharges of dredged or fill material into waters of the state and regulated under section 404 of the Clean Water Act (42 U.S.C. 1344), except where the commissioner determines, on a case-by-case basis that such a discharge threatens to violate state water quality standards concerning toxic pollutants.
- (3) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. However, all applicable pretreatment standards promulgated under section 307(b) and 307(c) of the Clean Water Act (42 U.S.C. 1317(b) and 42 U.S.C. 1317(c)) must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to discharges through pipes, sewers, or other conveyances owned by a public entity not leading to treatment works.
- (4) Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to discharges from:
  - (A) concentrated animal feeding operations as defined in IC 13-11-2-38.3 and 40 CFR 122.23; or
  - (B) silvicultural point sources, as defined in 40 CFR 122.27, that are point sources subject to the NPDES permit program.

(5) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 or 33 CFR 153.10(e) or of a state employee acting in a similar capacity.

(6) Discharges into a privately owned treatment works, except as the commissioner may otherwise require under section 10(e) of this rule.

(7) Any discharge by underground injection of salt or sulfur-bearing water or waste liquids associated with the recovery of oil and natural gas, if the discharge is pursuant to a valid permit issued by the natural resources commission under IC 13-8.

(8) Any discharge consisting entirely of return flows from irrigated agriculture.

(9) Deep injection wells, except in accordance with 327 IAC 5-4-2.

*(Water Pollution Control Board; 327 IAC 5-2-1.8)*

SECTION 1. 327 IAC 5-2-3 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-3 Permit application**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 3. (a) Any person required to have an NPDES permit, except for persons covered by general NPDES permits under 327 IAC 15, shall submit a complete application to the commissioner in accordance with this section, ~~and 327 IAC 5-3, and 40 CFR 122.21. In lieu of the forms specified in this section, a person may submit the application using equivalent state forms provided by the commissioner.~~

(b) An application for a permit shall be submitted to the commissioner by the time specified in 327 IAC 5-3-2 or, in the case of an application for a statutory modification of or variance from effluent limitations, by the time specified in 327 IAC 5-3-4.

(c) The owner of the facility or operation from which a discharge of pollutants occurs is responsible for applying for and obtaining a permit, except where the facility or operation is operated by a person other than an employee of the owner in which case it is the operator's duty to apply for and obtain a permit.

(d) All applicants for NPDES permits, **other than POTWs**, shall submit to the commissioner a completed Application Form 1 - General **Information**, ~~as described in 45 FR 33545-56 (May 19, 1980), including any revisions made to this form by EPA through December 31, 1986, EPA Form 3510-1, revised August 1990. The commissioner may substitute a substantially equivalent form for submittal in place of the Form 1 General.~~

(e) Existing **industrial facilities, including** manufacturing, commercial, mining, and silvicultural ~~dischargers~~ **operations** applying for NPDES permits shall provide the commissioner with the additional information specified in Application Form 2C NPDES ~~as described in 45 FR 38054-71 (September 26, 1984), including any revisions made to this form by EPA through December 31, 1986, or substantially equivalent forms supplied by the commissioner –~~ **Wastewater Discharge Information, EPA Form 3510-2C, revised August, 1990.**

(f) New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the commissioner with the additional information specified in ~~application~~ **Form 2B NPDES, Applications for Permit to Discharge Wastewater, Concentrated Animal feeding Operations and Aquatic Animal Production Facilities** ~~as described in 45 FR 33557-8 (May 19, 1980), including any revisions made to this form by EPA through December 31, 1986, or substantially equivalent forms supplied by the commissioner,~~ **EPA Form 3510-2B, revised November 2008.**

(g) New and existing POTWs shall provide the additional information specified **by 40 CFR 122.21(j)** on ~~Standard Form A-Municipal (EPA Form 7550-22) or substantially equivalent forms supplied by the commissioner. If EPA promulgates NPDES Form 2A NPDES, the commissioner may specify its use for applications by new and existing POTWs~~ **Application Overview, EPA Form 3510-2A, revised January, 1999. Pursuant to 40 CFR 122.21(j), the commissioner may waive any requirement of Form 2A that is not of material concern for a specific permit, if approved by EPA.** The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the commissioner:

- (1) All POTWs with design influent flows equal to or greater than one million (1,000,000) gallons per day.
- (2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program.

(h) In addition to the POTWs listed in subsection (g), the commissioner may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

- (1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of industrial contributors).
- (2) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).
- (3) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW.
- (4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to one (1) of the Great Lakes, or a water designated as an outstanding natural resource.
- (5) Other considerations (including, but not limited to, the history of toxic impact and compliance problems at the POTW), which the commissioner determines could cause or contribute to adverse water quality impacts.

(i) For POTWs required under subsection (g) or (h) to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred later.

(j) All POTWs with approved pretreatment programs shall provide, to the commissioner, a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

**(k) Except for stormwater discharges, all existing industrial facilities engaged in manufacturing, commercial, mining, and silvicultural operations shall provide the additional information specified in Application Form 2C – Wastewater Discharge Information, EPA Form 3510-2C, revised August, 1990.**

**(l) Except for storm water discharges, all new sources and new dischargers industrial facilities engaged in manufacturing, commercial, mining, and silvicultural activities operations shall provide the additional information specified in Application Form 2D NPDES as described in 51 FR 26999-27014 (July 28, 1986) – New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D, revised August, 1990. or substantially equivalent forms supplied by the commissioner.**

**(m) Except for storm water discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the commissioner with the additional information specified in Application Form 2E NPDES as described in 51 FR 26994-98**

~~(July 28, 1986)~~ – **Facilities Which Do Not Discharge Process Wastewater, revised August 1, 1990** or substantially equivalent forms supplied by the commissioner.

~~(m)~~**(n)** Point source Discharges of storm water associated with **new and existing** industrial activity as defined in 40 CFR 122.26(b)(14) shall provide additional information specified in application **NPDES Form 2F, Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity, EPA Form 3510-2F, revised January, 1992.**

~~(n)~~**(o)** Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three (3) years from the date the application is signed.

~~(o)~~**(p)** In the case of an application for permit reissuance by a manufacturing, commercial, mining, or silvicultural discharger who has previously submitted an application in accordance with subsection (e) or ~~(k)~~**(l)**, the permittee may request a waiver of the submission of analytical data for toxic pollutants otherwise required as part of the application if:

- (1) analyses reported in the previous application(s) of at least two (2) samples of the effluent did not detect the presence of the toxic pollutants; and
- (2) the permittee certifies that, to the best of his knowledge, no change in his operation has occurred since the previous application(s) that would give reason to believe the previous results would no longer be applicable.

The commissioner may grant or deny, in the commissioner's discretion, a request for a waiver under this subsection.

~~(p)~~**(q)** For discharges to waters within the Great Lakes system, in addition to the other requirements of this section, applicants requesting a permit renewal shall submit valid, representative receiving waterbody monitoring data for every metal monitored or limited in the applicant's existing permit. If the existing permit contains monitoring for cadmium, chromium (III), copper, lead, nickel, or zinc, the applicant shall also submit receiving waterbody monitoring data for hardness. The commissioner may require waterbody monitoring for additional substances if the data are necessary to process the permit application. If valid, representative, monitoring data in the waterbody for these parameters are already available, the applicant may request that this existing data substitute for the monitoring required under this subsection. The commissioner may require the submission of this additional receiving waterbody monitoring data for applicants requesting a new, renewal of, or modification of an NPDES permit if these additional data are necessary to draft an NPDES permit.

**(r) Applications for permits for on-site residential sewage discharging disposal systems located within the Allen County on-site waste management district must be submitted in accordance with 327 IAC 15-3.5.**

**(s) The permit application forms described in this section are available online at <http://cfpub.epa.gov/npdes/> or from the IDEM Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.**

*(Water Pollution Control Board; 327 IAC 5-2-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 618; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1738; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1422; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)*

SECTION 1. 327 IAC 5-2-8 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-8 Conditions applicable to all permits**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4; IC 13-18-7-1; IC 35-50-3-3

Sec. 8. The following conditions apply to all NPDES permits and shall be incorporated into the permits either expressly or by reference:

(1) The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act (~~CWA~~) and the ~~EMA~~ **environmental management** laws and is grounds for:

- (A) enforcement action;
- (B) permit termination, revocation and reissuance, or modification; or
- (C) denial of a permit renewal application.

A permittee may claim an affirmative defense to a permit violation; however, if the circumstances of the noncompliance meet the criteria of an upset as defined in subdivision ~~(12)~~ **(13)**.

(2) If the permittee wishes to continue an activity regulated by a permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(3) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(4) The following permit actions:

- (A) Permits may be modified, revoked and reissued, or terminated for cause.
- (B) Any information that the permittee knows or has reason to believe would constitute cause for modification or revocation and reissuance of the permit, such as plans for physical alterations or additions to the permitted facility that:

- (i) could significantly change the nature of, or increase the quantity of, pollutants discharged; or

- (ii) the commissioner may request to evaluate whether such cause exists;

shall be submitted for the commissioner's evaluation at the earliest time such information becomes available.

(C) The filing by the permittee of:

- (i) a request for a permit modification, revocation and reissuance, or termination; or
  - (ii) information specified in clause (B);

does not stay or suspend any permit term or condition.

(D) The permit may not be transferred to any person except in accordance with section 6(c) of this rule.

(5) If any applicable effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))** for a toxic pollutant injurious to human health and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the commissioner shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. Effluent standards or prohibitions established under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))** for toxic pollutants injurious to human health are effective and must be complied with, if applicable to the permittee, within the time provided in the implementing regulations, even absent permit modification.

(6) The permit does not convey any property rights of any sort or any exclusive privilege.

**(7) The permittee shall furnish to the commissioner, within a reasonable time, any information which the commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the commissioner upon request, copies of records required to be kept by this permit and 40 CFR 122.41(h).**

~~(7)~~**(8)** The permittee shall allow the commissioner, or an authorized representative (including an authorized contractor acting as a representative of the commissioner), upon the presentation of credentials and such other documents as may be required by law:

(A) to enter upon the permittee's premises where a ~~point source~~ **regulated facility or activity** is located or where any records must be kept under the terms and conditions of the permit;

(B) to have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(C) to inspect, at reasonable times:

(i) any monitoring equipment or method;

(ii) any collection, treatment, pollution management, or discharge facilities; or

(iii) practices required or otherwise regulated under the permit; and

(D) to sample or monitor, at reasonable times, any discharge of pollutants or internal wastestream (where necessary to ascertain the nature of a discharge of pollutants) for the purpose of evaluating compliance with the permit or as otherwise authorized.

~~(8)~~**(9)** The permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment that are:

(A) installed or used by the permittee; and

(B) necessary for achieving compliance with the terms and conditions of the permit.

This subdivision does not act as an independent source of authority to set effluent limitations. Such limitations will be based on the design removal rates of installed treatment facilities only as required under this article. Nor should this subdivision be construed to require the operation of installed treatment facilities that are unessential for achieving compliance with the terms and conditions of the permit.

~~(9)~~**(10)** The permittee shall comply with monitoring, recording, and reporting requirements

established in accordance with sections 13 through 15 of this rule. **Penalties include the following:**

**(A) Section 309(c)(4) of the CWA Clean Water Act (33 U.S.C. 1319(c)(4)), as well as IC 13-30-6-2 and IC 35-50-3-3,** provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

**(B) IC 13-30-10-1 provides that a person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a class B misdemeanor.**

~~(10)~~**(11)** The following are reporting requirements:

(A) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(B) The permittee shall give advance notice to the commissioner of any planned changes in the permitted facility, any activity, or other circumstances that the permittee has reason to believe may result in noncompliance with permit requirements.

(C) The permittee shall orally report information on any of the following types of noncompliance within twenty-four (24) hours from the time the permittee becomes aware of such noncompliance:

(i) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(ii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the permit to be reported within twenty-four (24) hours.

(iii) Any noncompliance that may pose a significant danger to human health or the environment. Reports under this item shall be made as soon as the permittee becomes aware of the noncomplying circumstances to the emergency response telephone numbers specified in 327 IAC 2-6-2 ~~[327 IAC 2-6 was repealed filed Feb 25, 1997, 1:00 p.m.: 20 IR 1734.]~~ **(888) 233-7745.**

(iv) Any upset that exceeds any effluent limitation in the permit.

A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The commissioner may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(D) The permittee shall also report all instances of noncompliance not reported under clauses (A) through (C), at the time discharge monitoring reports (DMRs) are submitted. The reports shall contain the information listed in clause (C).

(E) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commissioner, it shall promptly submit such facts or corrected information.

(F) The permittee shall give notice to the commissioner as soon as possible of any planned physical alterations or additions to the permitted facility. (As used in this clause, "permitted facility" refers to a point source discharge, not a wastewater treatment facility. See IC 13-18-7-

1.) Notice is required only when either of the following applies:

(i) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in ~~327 IAC 5-1-2(b)~~.

(ii) The alteration or addition could significantly change the nature of, or increase the quantity of, pollutants discharged. This notification applies to pollutants that are subject ~~either neither~~ to effluent limitations in the permit ~~or nor~~ to notification requirements under section 9 of this rule.

~~(11)~~**(12)** The following are requirements for bypass:

(A) The following definitions:

(i) "Bypass" means the intentional diversion of a waste stream from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(B) The permittee may allow any bypass to occur that does not exceed any effluent limitations contained in the NPDES permit, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to clauses (C) and (D).

(C) The permittee must provide the commissioner with the following notice:

(i) If the permittee knows or should have known in advance of the need for a bypass (anticipated bypass), it shall submit prior written notice. If possible, such notice shall be provided at least ten (10) days before the date of the bypass for approval by the commissioner.

(ii) The permittee shall submit notice of an unanticipated bypass as required by subdivision (10)(C).

(D) The following provisions are applicable to bypasses:

(i) Bypass is prohibited, and the commissioner may take enforcement action against a permittee for bypass unless the following occur:

(AA) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(BB) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment down time or preventive maintenance.

(CC) The permittee submitted notices as required under clause (C).

(ii) The commissioner may approve an anticipated bypass, after considering its adverse effects if the commissioner determines that the anticipated bypass will meet the three (3) conditions listed in item (i). The commissioner may impose any conditions determined to be necessary to minimize any adverse effects.

~~(12)~~**(13)** The following are requirements for upset:

(A) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(B) An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of clause (C) are met.

(C) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:

(i) an upset occurred and the permittee has identified the specific cause of the upset, ~~if possible~~;

(ii) the permitted facility was at the time being operated in compliance with proper operation and maintenance procedures;

(iii) the permittee complied with any remedial measures required under subdivision (3); and

(iv) the permittee submitted notice of the upset as required in subdivision (10)(C).

~~(13)~~**(14)** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

~~(14)~~**(15)** All applications, reports, or other information submitted to the commissioner shall be signed and certified as ~~defined~~ **described** under section 22 of this rule. **Penalties include the following:**

**(A) Section 309(c)(4) of the CWA Clean Water Act (U.S.C. 1319(c)(4)), ~~IC 13-6-2 [IC 13-6 was repealed by P.L. 1-1996, SECTION 99, effective July 1, 1996.], and IC 35-50-3-3 provide~~ provides** that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

**(B) IC 13-30-10-1 provides that a person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a class B misdemeanor.**

*(Water Pollution Control Board; 327 IAC 5-2-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 620; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1741; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1423)*

SECTION 1. 327 IAC 5-2-14 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 5-2-14 Recording of monitoring results**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3  
Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 14. (a) Any permittee required to monitor under 327 IAC 5-2-13 shall maintain records of all monitoring information and monitoring activities, including:

- (1) the date, exact place and time of sampling or measurements;
- (2) the person(s) who performed the sampling or measurements;
- (3) the date(s) analyses were performed;
- (4) the person(s) who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of such measurements and analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three (3) years. **These records shall be retained on-site at the permitted facility or in such a manner that the records are reasonably available for review by agency staff to comply with the provisions of 327 IAC 5-1-3.** The three-year period shall be extended:

- (1) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee; or
- (2) as requested by the commissioner.

*(Water Pollution Control Board; 327 IAC 5-2-14; filed Sep 24, 1987, 3:00 pm: 11 IR 629)*

SECTION 1. 327 IAC 5-2-15 IS AMENDED TO READ AS FOLLOWS:

#### **327 IAC 5-2-15 Reporting requirements**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3  
Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 15. (a) Permittees shall report to the commissioner, using discharge monitoring reports (DMR) (EPA Form 3320-1) and, also, in the case of POTWs, semipublic, state, and federal facilities' reports of operation, the results of any monitoring specified by the permit, under section 13 of this rule, as often as required by the permit, but in no case less than once per year. POTWs with pretreatment or hybrid pretreatment requirements in their NPDES permits as well as industrial dischargers shall also submit the results of effluent analysis on the Indiana ~~Discharge~~ **Monthly Monitoring Report (MMR) for Industrial Discharge Permits (State Form 30530)**. **Alternatively, permittees may seek authorization by the commissioner to utilize agency-approved electronic reporting formats for the submittal of all NPDES-related reports in lieu of submitting paper copies of such documents.**

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. Other monitoring data not specifically required in the permit (such as internal process or internal wastestream data) that is collected by or for the permittee need not be submitted unless requested by the commissioner. Any such additional monitoring data that indicates a violation of a permit limitation shall be followed up by the permittee, whenever feasible, with a monitoring sample obtained and analyzed pursuant to approved analytical methods. The results of the analysis of the follow-up sample shall be reported to the commissioner in the permittee's DMR.

(c) All reports required by this section shall be prepared by or under the direction of a certified wastewater treatment plant operator or a certified water treatment plant operator licensed under the provisions of **327 IAC 5-22** or 327 IAC 8 when such reports concern a discharge originating in whole or in part from a wastewater treatment plant or a water treatment plant, respectively, as defined in IC 13-11-2.

(d) As used in this section, "approved analytical methods" means those test procedures for the analysis of pollutants under section 13(d) of this rule.

(e) NPDES effluent data is to be reported on the monthly DMRs as follows:

(1) Effluent concentrations less than the LOD shall be reported as less than the value of the LOD. For example, if a substance is not detected at a concentration of one (1.0) milligram per liter, the value shall be reported as < 1.0 mg/l.

(2) Effluent concentrations greater than or equal to the LOD shall be reported at the measured value. Effluent concentrations greater than or equal to the LOD and less than the LOQ that are reported on a DMR shall be annotated on the DMR to indicate that the value is not quantifiable.

(3) Except as provided in section 11.6(h)(3) of this rule, when the individual daily values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

(4) Mass discharge values that are calculated from concentrations reported as less than the value of the LOD shall be reported as less than the corresponding mass discharge value.

(5) Mass discharge values that are calculated from effluent concentrations greater than the LOD shall be reported at the calculated value.

(6) Except as provided in section 11.6(h)(3) of this rule, when the individual daily mass discharge values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

*(Water Pollution Control Board; 327 IAC 5-2-15; filed Sep 24, 1987, 3:00 p.m.: 11 IR 629; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1754; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1466; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2126)*

SECTION 1. 327 IAC 5-2-17 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-17 New sources and new dischargers**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 17. ~~(a) Definitions. "Existing source" means any source which is not a new source or a new discharger.~~

~~"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.~~

~~"New source" and "new discharger" are defined in 327 IAC 5-1-2 [327 IAC 5-1-2 was repealed filed Jan 14, 1997, 12:00 p.m.: 20 IR 1479.].~~

~~"Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.~~

~~"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.~~

~~(b)~~**(a)** Criteria for new source determination.

(1) Construction of a new source has commenced if the owner or operator has:

- (A) Begun, or caused to begin as part of a continuous on-site construction program:
    - (i) any placement, assembly, or installation of facilities or equipment; or
    - (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (B) Entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.
- (c)(b) Effect of compliance with new source performance standards.
- (1) Except as provided in subdivision (2), any new source which meets the applicable promulgated new source performance standards from the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under section 301(b)(2) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311(b)(2))** for the shortest of the following periods:
- (A) ten (10) years from the date that construction is completed;
  - (B) ten (10) years from the date the source begins to discharge process wastewater or other wastewater not related to construction; or
  - (C) the period of depreciation or amortization of the facility for the purposes of ~~Section~~ **sections 167 or and 169 (or both) of the Internal Revenue Code (26 U.S.C. 167; 26 U.S.C. 169).**
- (2) The protection from more stringent standards of performance afforded by subdivision (1) does not apply to:
- (A) additional or more stringent permit conditions which are not technology-based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))**; and
  - (B) additional technology-based permit conditions established under 327 IAC 5-5-2(b) to control pollutants listed as toxic under section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))** or as hazardous substances under section 311 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1321)** and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.
- (3) Where an NPDES permit issued to a source enjoying a "protection period" under subdivision (1) will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311)** and any other then applicable requirements of the ~~CWA~~ **Clean Water Act** immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.
- (4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permit before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator must meet all permit terms and conditions.
- (5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

SECTION 1. 327 IAC 5-2-20 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-20 Enforcement**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4; **IC 13-30**

Sec. 20. (a) Any violation of this article:

(1) may subject the person causing or contributing to said violation to administrative or judicial enforcement proceedings, pursuant to **IC 13-30** ~~IC 13-7-5, IC 13-7-11, and the penalties provided under IC 13-7-13~~;

(2) may be cause, pursuant to section 16 of this rule, for modification, revocation and reissuance, or termination of an NPDES permit; and

(3) may, in an appropriate case, warrant the invocation of emergency procedures provided in ~~IC 13-7-12~~ **IC 13-14-10**.

(b) The three (3) enforcement responses enumerated in subsection (a) are independent and not mutually exclusive. Thus the initiation and prosecution of any particular response to a violation of this article does not exclude the concurrent or subsequent initiation of any other response.

(c) For purposes of this section, a "violation of this article" shall include, but not be limited to:

(1) the discharge of pollutants without an NPDES permit or in violation of any effluent limitation in an NPDES permit;

(2) the violation of any other term or condition of an NPDES permit;

(3) failure to comply with NPDES application requirements under section 3 of this rule or 327 IAC 5-3; or

(4) failure to allow entry, inspection, and monitoring by the commissioner when requested in accordance with applicable law or to carry out monitoring, recording, and reporting required under this article.

**(d) For a permit for storm water run-off associated with construction activity, the department shall investigate potential violations of the permit to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership, building permits issued by local units of government, and other relevant information, which may include site inspections, storm water pollution prevention plans, notices of intent, and other information related to the specific facts and circumstances of the potential violation.**

*(Water Pollution Control Board; 327 IAC 5-2-20; filed Sep 24, 1987, 3:00 p.m.: 11 IR 632; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1756)*

SECTION 1. 327 IAC 5-2-22 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-22 Signatories to permit applications and reports**

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 22. (a) All permit applications shall be signed as follows:

(1) The following for a corporation by a responsible corporate officer:

(A) For purposes of this section, "a responsible corporate officer" means either of the following:

(i) A president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policymaking or decision making functions for the corporation.

(ii) The manager of one (1) or more manufacturing, production, or operating facilities ~~employing more than two hundred fifty (250) persons or having gross annual sales or~~

expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if delegated, **provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty to make major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where** authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~(B) For purposes of this section, a principal executive officer of a federal agency includes the following:~~

~~(i) The chief executive officer of the agency.~~

~~(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.~~

(2) For a partnership or sole proprietorship by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency or political subdivision thereof by either a principal executive officer or ranking elected official. **For purposes of this section, a principal executive officer of a federal agency includes:**

**(A) the chief executive officer of the agency; or**

**(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).**

**(4) Permit applicants who meet the criteria set forth in this subsection may also utilize agency-approved electronic application mechanisms in lieu of paper NPDES applications.**

(b) All reports required by permits and other information requested by the commissioner shall be signed by a person described in subsection (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if the authorization meets the following requirements:

(1) The authorization is made in writing by a person described in subsection (a).

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) The written authorization is submitted to the commissioner.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the commissioner prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Any person signing a document under subsection (a) or (b) shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

*(Water Pollution Control Board; 327 IAC 5-2-22; filed Sep 24, 1987, 3:00 p.m.: 11 IR 633; filed Feb 26, 1993, 5:00 p.m.: 16 IR1756)*

SECTION 1. 327 IAC 5-3-8 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-3-8 Fact sheet**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 8. (a) **The department shall** prepare a fact sheet ~~shall be prepared~~ for every draft permit for a major discharger, any draft permit which incorporates a statutory variance or modification or requires explanation under subsection (b)(5), general permits, and every draft permit which the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the following:

- (1) The applicant.
- (2) EPA Region 5.
- (3) The district engineer of the Corps of Engineers.
- (4) The regional director of the U.S. Fish and Wildlife Service.
- (5) Other interested state and federal agencies.
- (6) Any other person on request.
- ~~(7) All persons on a mailing list for receipt of fact sheets (see section 12(g) of this rule).~~

~~Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.~~

(b) The fact sheet shall include the following:

- (1) A brief description of the type of facility or activity that is the subject of the draft permit and, where appropriate, a sketch or detailed description of the discharge described in the application.
- (2) A description of the type and quantity of pollutants which are, or are proposed to be, discharged.
- (3) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based.
- (4) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under 327 IAC 5-2-10 and reasons why they are applicable or an explanation of how alternate effluent limitations were developed.
- (5) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
  - (A) Technology-based limitations to control toxic pollutants under 327 IAC 5-2-10.
  - (B) Limitations on internal waste streams in accordance with 327 IAC 5-2-11(h).
  - (C) Limitations on indicator pollutants under 327 IAC 5-2-10(6) and 327 IAC 5-5-2(f).
  - (D) Limitations allowing an increase in the discharge of any pollutant, including an explanation that satisfies the requirements of 327 IAC 5-2-10(11) and the antidegradation requirements of 327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2-11.3.

(E) Limitations implementing a variance from water quality standards under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17 and section 4.1 of this rule.

- (6) Reasons why requested variances or modifications from otherwise required effluent limitations do or do not appear justified.
- (7) Name and telephone number of a departmental contact person who can provide additional information.
- (8) Any information, not otherwise specified herein, required under section 12 or 12.1 [sic.] of this rule.

*(Water Pollution Control Board; 327 IAC 5-3-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 5-3-9 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-3-9 Public comments and public hearings**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 9. (a) A comment period of at least thirty (30) days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and may request a public hearing in accordance with subsection (b). All comments, including those submitted in a public hearing, shall be considered by the commissioner in preparing the final permit and shall be responded to as provided in 327 IAC 5-3-15.

(b)(1) A public hearing on a draft permit may be held by the commissioner in appropriate cases, either on the commissioner's own initiative or in response to a request or requests for public hearing submitted during the public comment period. Such a hearing shall be held where the commissioner finds there is a significant public interest in the draft permit. Instances of doubt will be resolved in favor of holding a hearing. Public notice of a public hearing shall be given as specified in 327 IAC 5-3-12.

(2) A request for a public hearing shall be in writing and shall state the nature of the issues to be raised and the reasons why a hearing is warranted.

(3) Any hearing conducted pursuant to this section shall be held in the geographical area of the proposed discharge, or other appropriate area where significant public interest exists in the discretion of the commissioner, and may, when appropriate, consider two or more related draft permits.

(4) Any person appearing at such a hearing may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. A hearing conducted under this section shall not constitute an "administrative adjudication" for purposes of IC 4-22-1 or IC 4-21.5.

(c) All persons, including the applicant, who believe any of the terms and conditions of a draft permit or a tentative decision to deny or terminate a permit is not appropriate for any reason, must raise all reasonably ascertainable issues and submit all arguments and a summary of the factual grounds supporting their position by the close of the public comment period (including any public hearing period).

(d) ~~Since a general permit is in the nature of rule, Public notice and opportunity for comment and public hearing of the a proposed issuance of a general permit must be given provided in accordance with statutorily prescribed procedures for administrative agency rulemaking as well as the provisions of this section and 327 IAC 5-3-12.~~

*(Water Pollution Control Board; 327 IAC 5-3-9; filed Sep 24, 1987, 3:00 pm: 11 IR 638; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 5-3-12 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-3-12 Public notice of comment period; public hearings concerning permit determinations**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 12. (a) Notice of every proposed determination on a permit issuance or denial and of a public hearing concerning such a proposed determination shall be circulated in a manner designed to inform interested persons. Notice of a proposed permit determination shall allow at least thirty (30) days for public comment, as specified in section 9 of this rule, and notice of a public hearing shall be given at least thirty (30) days before the hearing.

(b) Public notices required by subsection (a) shall be given by the commissioner as follows:

(1) By ~~mailing transmitting~~ a copy ~~by certified mail, return receipt requested,~~ to the applicant, to EPA, ~~and to the U.S. Army Corps of Engineers, and by regular first class mail~~ to federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources (including the U.S. Fish and Wildlife Service and the Indiana department of natural resources), to other appropriate governmental authorities including any affected state, to any person on request, and to all persons on a mailing list for receipt of such notices.

(2) By publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge or, at the commissioner's discretion, by any other method reasonably calculated to give actual notice of the proposed permit action to persons potentially affected by it, including the use of press releases or by posting a copy of the information required under subsection (c) at the principal office of the municipality or political subdivision affected by the facility or discharge ~~and at the United States post office serving those premises.~~

Any person otherwise entitled to receive notice under subdivision (1) may waive the right to receive notice for any classes and categories of permits.

(c) All public notices issued under this section shall contain the following information:

(1) Name and address of this department.

(2) Except in the case of general permits, name and address of the applicant and the discharger (if different from the applicant) and a general description of the location of each existing or proposed discharge point, including the receiving water.

(3) A brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to a new or existing discharge.

(4) A brief description of the tentative permit determination, e.g., to issue, deny, modify, revoke and reissue, terminate the permit, or grant or deny a request for variance from applicable water quality standards, in accordance with section 4.1 of this rule.

(5) If the applicant has properly applied under section 316(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1326(a))** for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the applicant are available as part of the administrative record for public inspection during office hours. The notice shall also include the following:

(A) A brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311 or 33 U.S.C. 1316).**

(B) A statement that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1326(a))** and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the application.

(C) If the applicant has filed an early screening application for a ~~CWA~~ **Clean Water Act** section 316(a) **(33 U.S.C. 1326(a))** variance under 327 IAC 5-7-3, a statement that the applicant has submitted such a plan.

(6) A brief description of the comment procedures provided under section 9 of this rule and a statement of the right and procedures to request a public hearing.

(7) Name of a contact person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit and the statement of basis or fact sheet.

(d) Notice of the formulation of a draft general permit and the issuance of a final general permit under ~~section 15 of this rule~~ **327 IAC 15** shall:

- (1) meet the requirements of subsection (c) and shall also include:
  - (A) a brief description of the types of activities or operations to be covered by the general permit;
  - (B) a map or description of the general permit boundary; and
  - (C) the basis for choosing the general permit boundary; ~~and~~
- (2) be published in ~~the Indiana Register and in one (1) or more daily or weekly newspapers in general circulation within the general permit boundaries; and~~
- (3) comply with the public notice requirements in 40 CFR 123.25(a)(28).**

In addition to the publication required by ~~subdivision~~ **subdivisions (2) and (3)**, the commissioner shall use all other reasonable means to notify affected dischargers of the draft and final general permit, including the ~~mailing~~ **transmitting** of a copy of such notice to those permittees which are affected.

(e) In addition to the information required under subsection (c), public notice of a public hearing held under section 9 of this rule shall contain the following information:

- (1) Reference to the date and identification number of the public notice of the draft permit.
- (2) Date, time, and place of the hearing.
- (3) A brief description of the nature and purpose of the hearing including the applicable rules and procedures.

(f) The commissioner, at the commissioner's discretion, may include in any notice of a tentative permit determination under subsection (c) a notice of hearing in accordance with subsection (e), whether or not any request for such hearing shall have been submitted to him.

(g) The mailing lists referred to in subsection (b)(1) and in section 8(a) of this rule consists of those persons who request to be on the list to receive copies of all public notices ~~or fact sheets, respectively, or both~~. Such a request shall be made in writing to the department and shall be renewed annually in the month of January. Failure to renew the request will be cause for the commissioner to remove a name from the appropriate mailing list. Availability of the mailing lists will be publicized periodically through press releases and notices in the Indiana Register, **IDEM website**, or other appropriate publications. The commissioner may establish regional mailing lists in addition to or in place of a statewide list.

*(Water Pollution Control Board; 327 IAC 5-3-12; filed Sep 24, 1987, 3:00 p.m.: 11 IR 639; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 5-3-14 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-3-14 Issuance and effective date of a permit**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 14. (a) After the close of:

- (1) the public comment period (including any public hearing) required by section 9 9(a) of this rule on a draft permit; and**
- (2) any public hearing held under section 9(b) of this rule;**

the commissioner, except as provided in subsection (c), shall issue a final permit decision and shall serve notice of that action on the applicant and on each person who has submitted written comments or

requested notice of the final permit decision. This notice shall include reference to the procedures available to contest the permit terms by requesting an adjudicatory hearing. For the purposes of this section, "final permit decision" means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) Issuance of a general permit shall be accomplished by the publication of the full text of the permit in the Indiana Register and the notification specified under section 12(d) of this rule, in addition to the notification required by subsection (a).

(c) The commissioner may delegate authority to a staff member to issue or deny NPDES permits to applicants within a specified class or category of ~~point sources~~ **discharges**. Within the scope of any such delegation, a reference in this rule to the commissioner shall also mean the commissioner's delegatee.

(d) A final permit decision shall become effective with respect to the applicant unless, within fifteen (15) days after receipt of notice of said decision, the applicant files a request for adjudicatory hearing concerning the permit decision with the commissioner in accordance with ~~IC 13-7-10-2.5(c)~~ **IC 13-15-16-1** and IC 4-21.5-3-7.

(e) If an adjudicatory hearing request concerning a final permit decision is granted by the board pursuant to ~~IC 13-7-10-2.5(e)~~ **IC 13-15-6-3**, any permit provisions that are stayed by order of the board shall not go into effect until confirmed at the final resolution of the hearing or until the board otherwise dissolves the stay. Any permit provisions not stayed by the board in such a proceeding remain effective and in full force.

(f) Where permit provisions are stayed during an adjudicatory proceeding on a renewal permit for an existing source, all provisions of the previous permit which correspond to the stayed provisions of the new permit and which are consistent with those provisions of the new permit that are not stayed shall continue in full force and effect until a final resolution of the adjudicatory proceeding. However, this subsection shall not apply if a timely and sufficient application for the renewal permit was not submitted in accordance with ~~IC 13-7-10-2(e)~~ **IC 13-15-3-6**.

*(Water Pollution Control Board; 327 IAC 5-3-14; filed Sep 24, 1987, 3:00 p.m.: 11 IR 641; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1762; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 5-3.5-9 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-3.5-9 PMPP requirements**

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: **IC 13-18-3-15**; IC 13-18-4

Sec. 9. (a) A PMPP for a facility must be submitted with an application for an SMV. The PMPP must contain the following:

- (1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.
- (2) Preliminary identification of known mercury-bearing equipment, wastestreams, and mercury storage sites.
- (3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities may consider technical and economic feasibility and must include, at a minimum, the following:
  - (A) A review of purchasing policies and procedures.
  - (B) Necessary training and awareness for facility staff.

- (C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.
  - (D) Other specific activities designed to reduce or eliminate mercury loadings.
  - (E) An identification of the facility's responsibilities under ~~P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session)~~ **IC 13-20-17.5**.
- (4) For each activity specified in subdivision (3), the plan must contain the following:
- (A) The goal to be accomplished.
  - (B) A measure of performance.
  - (C) A schedule for action.
- (5) All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.
- (6) Identification of the resources and staff necessary to implement the PMPP.
- (7) Proof of completion of public notice activities required under this section.
- (8) Annual reports according to a schedule in the PMPP. Each annual report must describe the following:
- (A) The facility's progress toward fulfilling each of the requirements of the PMPP.
  - (B) The results of mercury monitoring.
  - (C) The steps taken to implement each planned activity developed under this subsection and subsection (b) to reduce or eliminate mercury from the facility's water.
- (b) In addition to subsection (a), a PMPP for a POTW must include the following:
- (1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:
- (A) Medical facilities, for example, the following:
    - (i) Hospitals.
    - (ii) Clinics.
    - (iii) Nursing homes.
    - (iv) Veterinary facilities.
  - (B) Dental clinics.
  - (C) Public and private educational laboratories.
  - (D) General industry and all SIUs.
  - (E) Significant sources of residential and retail contributions of mercury, for example, the following:
    - (i) Heating, ventilation, and air conditioning contractors.
    - (ii) Automobile and appliance repair.
    - (iii) Veterinarians.
    - (iv) Others specific to the community served.
  - (F) An identification of the responsibilities under ~~P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session)~~ **IC 13-20-17.5** for the significant industrial users for the POTW.
- (2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).
- (3) For each activity specified in subdivision (2), the plan must contain the following:
- (A) The goal to be accomplished.
  - (B) A measure of performance.
  - (C) A schedule for action.
- (4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.

(c) Prior to submitting the PMPP to the department as part of the SMV application, an applicant shall do the following:

(1) Publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge.

(2) Post a copy of the information required by this section at the following:

(A) Principal office of the municipality or political subdivision affected by the facility or discharge.

(B) The United States post office.

(C) If one is available, the library serving those premises.

(d) All notices published under this section shall contain the following information:

(1) The name and address of the applicant that prepared the PMPP.

(2) A general description of the elements of the PMPP.

(3) A brief description of the activities or operations that result in the discharge for which an SMV is being requested.

(4) A brief description of the purpose of this notice and the comment procedures.

(5) The name of a contact person, a mailing address, an internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.

(e) The applicant shall do the following:

(1) Provide a minimum comment period of thirty (30) days.

(2) Include a copy of the comments received and the applicant's responses to those comments in the SMV application submitted to the department.

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section.

*(Water Pollution Control Board; 327 IAC 5-3.5-9; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351)*

SECTION 1. 327 IAC 5-4-5 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-4-5 Aquaculture projects**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 5. Discharges into ~~aquaculture [sic.]~~ **aquaculture** projects, as defined in 40 CFR 122.25, are subject to the NPDES permit program in accordance with the criteria specified in 40 CFR Part 125, Subpart B.

*(Water Pollution Control Board; 327 IAC 5-4-5; filed Sep 24, 1987, 3:00 pm: 11 IR 643)*

SECTION 1. 327 IAC 5-4-6 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-4-6 Storm water discharges**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-4

Sec. 6. (a) The following discharges consisting entirely of storm water require an individual ~~NPDES~~ permit:

(1) A discharge that the commissioner determines:

(A) contributes to a violation of a water quality standard;

(B) is a significant contributor of pollutants to waters or to a regulated municipal separate storm sewer system (MS4) conveyance; or

(C) meets **any of the conditions of one (1) of the six (6) cases listed in 327 IAC 15-2-9(b) 327 IAC 15-2-9(a).**

(2) A discharge with respect to which a permit has been issued prior to February 4, 1987.

(3) A discharge that is subject to federal storm water effluent limitation guidelines unless the effluent limitations are placed in a general permit under 327 IAC 15.

(4) A discharge associated with the state department of transportation.

~~(5) A discharge from an MS4 conveyance subject to regulation under 40 CFR 122.26(a)(iii) or 40 CFR 122.26(a)(iv).~~

(b) ~~The following Discharges consisting~~ **described in 327 IAC 15-2-2 that consist** entirely of storm water require an NPDES permit and are eligible for coverage under a general NPDES permit unless ~~one (1) any of the conditions in subsection (a) for issuance of an individual permit is are met.~~

~~(1) A discharge exposed to categories of industrial activity specified in 327 IAC 15-6-2.~~

~~(2) A discharge associated with construction activities, which disturb one (1) or more acres of land. Included in these activities are disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) or more acres of land.~~

~~(3) A discharge from an MS4 conveyance that meets the designation criteria in 327 IAC 15-13-3(a) or 327 IAC 15-13-3(b).~~

(c) The commissioner shall not, under this section, require a permit for discharges of storm water run-off from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including, but not limited to, pipes, conduits, ditches, and channels, used for collecting and conveying precipitation run-off and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations **any of the following:**

**(1) Agricultural storm water runoff or return flows from irrigated agriculture.**

**(2) Storm water discharges from mining operations composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation runoff that has not come into contact with any overburden, raw material, intermediate products, finished product, byproducts or waste products located on the site of the operations. Conveyances include pipes, conduits, ditches and channels.**

**(3) Storm water discharges from oil and gas exploration field activities or operations associated with oil and gas exploration, production, processing or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and the movement and placement of drilling equipment.**

(d) If an individual NPDES permit is required under subsection (a) **for discharges consisting entirely of storm water, or if an individual permit is required under 327 IAC 5-2-2 which includes discharge of commingled storm water associated with industrial activity,** the department may consider the following in determining the requirements to be contained in the permit:

(1) The provisions in **the following:**

(A) ~~327 IAC 15-5, 327 IAC 15-6, and 327 IAC 15-13, as appropriate to the type of storm water discharge; or The EPA 2012 NPDES General Permit for Discharges from Construction Activities effective February 16, 2012.~~

(B) **The EPA 2008 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, as modified, effective May 27, 2009.**

(C) **EPA's general permit requirements for small municipal separate storm sewer systems (MS4s) in 40 CFR 122, Subpart B.**

**(D) NPDES Pesticide General Permit for Point Source Discharges to Waters of the State from the Application of Pesticides, Permit Number ING870000, effective October 31, 2011, available at [http://www.in.gov/idem/files/npdes\\_permit\\_pesticide\\_final\\_permit.pdf](http://www.in.gov/idem/files/npdes_permit_pesticide_final_permit.pdf) or from the IDEM Office of Water Quality, Permits Branch, 100 North Senate Avenue, Indianapolis, IN 46204-2251.**

**(E) 327 IAC 5-2, 327 IAC 5-5, and 327 IAC 5-9 for establishing NPDES permit effluent limitations and conditions.**

~~(2) The United States Environmental Protection Agency guidance document titled "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits", EPA 833-D-96-001, (September 1, 1996)\*, available from U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio 45242-0419 or from the department.~~

~~(3) The nature of the discharges and activities occurring at the site or facility.~~

~~(4) Other information relevant to the potential impact on water quality.~~

(e) Storm water run-off discharged into a combined sewer system is not subject to the provisions of this section.

(f) Whether a discharge from an MS4 conveyance is, subject to regulation under this section, shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the ~~CWA~~ **Clean Water Act**.

~~(g) Terms, as used in this section, have the same meaning as defined under 40 CFR 122.26(b), 327 IAC 15-5-4, 327 IAC 15-6-4, or 327 IAC 15-13-5, unless defined as follows:~~

~~(1) "General NPDES permit" means an authorization to discharge under the NPDES rules, that is applicable to all owners and operators of point sources of a particular category located within a designated general permit boundary, other than owners and operators of such sources to whom individual NPDES permits have been issued.~~

~~(2) "Individual NPDES permit" means an authorization to discharge under the NPDES rules, that is applicable to an individual owner or operator of point sources, and establishes requirements specific for that owner or operator.~~

~~\*Copies of the United States Environmental Protection Agency guidance document referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~(Water Pollution Control Board; 327 IAC 5-4-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 644; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1764; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3575; errata filed Sep 8, 2003, 3:15 p.m.: 27 IR 191; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)~~

SECTION 1, 327 IAC 5-16-1 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 5-16-1 Purpose and objectives**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; **IC 13-18-3-15**; IC 13-18-4

Sec. 1. (a) The pretreatment rules establish a state program to control the discharge of industrial pollutants into publicly owned treatment works (POTWs), as defined in 327 IAC 5-1.5-48, to implement 40 CFR 403 and related provisions of the federal Clean Water Act, 33 U.S.C. §1251.

(b) The state pretreatment program has the following three (3) objectives:

(1) To prevent the introduction of pollutants into a POTW that will interfere with the operation of a POTW, including interference with the use or disposal of municipal sludge.

(2) To prevent the introduction of pollutants into a POTW that will pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works.

(3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

(c) The pretreatment rules apply to:

(1) new or existing industries that discharge by direct connection or indirectly by truck, rail, or other means, nondomestic wastes into POTWs; and

(2) POTWs that receive or may receive discharges of nondomestic wastes from those industries.

~~(d) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations in the pretreatment rules refers to the July 1, 1999, revision.~~

*(Water Pollution Control Board; 327 IAC 5-16-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

SECTION 1. 327 IAC 5-16-5 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-16-5 Reporting requirements for POTWs and industrial users**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; **IC 13-18-3-15**; IC 13-18-4; IC 13-18-11

Sec. 5. (a) All POTWs and industrial users shall comply with the applicable reporting requirements of 40 CFR 403.12\*.

(b) The reporting requirements for an industrial user upon the effective date of a categorical pretreatment standard are as follows:

(1) An existing industrial user subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a baseline report that contains the information listed in subsection (c) within one hundred eighty (180) days after the:

(A) effective date of a categorical pretreatment standard; or

(B) final administrative decision made upon a category determination submission under 40 CFR 403.6(a)(4);

whichever is later.

(2) A new source, and a source that becomes an industrial user subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the control authority a report that contains the information listed in subsection (c)(1) through (c)(5), at least ninety (90) days prior to commencement of discharge.

(3) A new source shall:

(A) also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards; and

(B) give estimates of the information requested in subsection (c)(4) and (c)(5).

(c) The baseline monitoring report submitted by the industrial user to the POTW must include the following information:

(1) The name and address of the facility, including the name of the operator and owners.

(2) A list of any environmental control permits held by or for the facility.

(3) A brief description of the operation, including:

(A) the nature;

(B) the average rate of production; and

(C) the standard industrial classification;

of the operation or operations carried out by the industrial user. This description must include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

(4) Measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(A) Regulated process streams.

(B) Other streams, as necessary, to allow use of the combined waste stream formula of subdivision (6)(C).

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) The pretreatment standards applicable to each regulated process.

(6) The results of sampling and analysis, identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. The following apply to sampling and analysis results:

(A) Both daily maximum and average concentration (or mass, where required) must be reported. The sample must be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard.

(B) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this subdivision.

(C) Samples must be taken immediately downstream from existing pretreatment facilities, or immediately downstream from the regulated process, if no pretreatment facilities exist. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit, along with supporting data, must be submitted to the control authority.

(D) Sampling and analysis must be performed in accordance with the techniques prescribed in 40 CFR ~~Part 136 and amendments thereto~~. Where:

(i) 40 CFR ~~Part 136~~ does not contain sampling or analytical techniques for the pollutant in question; or

(ii) the administrator determines that the ~~Part 40 CFR~~ 136 sampling and analytical techniques are inappropriate for the pollutant in question;

sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.

(E) The control authority may allow the submission of a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(F) The baseline report allowed under clause (E) must:

(i) indicate:

(AA) the time;

(BB) the date;

(CC) the place of sampling; and

(DD) the methods of analysis; and

(ii) certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(7) The industrial user shall submit a certification statement indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, is required for the industrial user to meet the pretreatment standards and requirements. The statement must be:

(A) reviewed by an authorized representative of the industrial user, as defined in section 5.3 of this rule; and

(B) certified by a qualified professional.

(8) The industrial user shall use the shortest compliance schedule by which additional pretreatment or O and M, or both, may be provided if required to meet the pretreatment standards. The completion date in this schedule must not be later than the compliance date established for the applicable pretreatment standard.

(9) Where the industrial user's categorical pretreatment standard has been modified by a removal allowance under 40 CFR 403.7, the combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, at the time the industrial user submits the report required by subsection (b), the information required by subdivisions (7) and (8) shall apply to the modified limits.

(10) If the categorical pretreatment standard is modified by a removal allowance under 40 CFR 403.7, combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, after the industrial user submits the report required by subsection (b), any necessary amendments to the information required by subdivisions (7) and (8) must be submitted by the industrial user to the control authority within sixty (60) days after the modified limit is approved.

(d) The following conditions apply to the compliance schedule for meeting categorical pretreatment standards required by subsection (c)(8):

(1) The schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards, for example, the following:

(A) Hiring an engineer.

(B) Completing preliminary plans.

(C) Completing final plans.

(D) Executing a contract for major components.

(E) Commencing construction.

(F) Completing construction.

(2) No increment established in subdivision (1) may exceed nine (9) months.

(3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the following:

(A) The date on which it expects to comply with this increment of progress.

(B) The reason for delay.

(C) The steps being taken by the industrial user to return the construction to the schedule established. In no event may more than nine (9) months elapse between the progress reports to the control authority.

(e) Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following the introduction of wastewater into the POTW, an industrial user shall do the following:

(1) An industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (c)(4) through (c)(6).

(2) For an industrial user subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required under subdivision (1) must contain a reasonable measure of the industrial user's long-term production rate.

(3) For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required under subdivision (1) must include the industrial user's actual production during the appropriate sampling period.

(f) This subsection does not apply to nonsignificant categorical users as defined in 40 CFR 403.3(v)(2). An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit a periodic compliance monitoring report to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the approval authority. The periodic compliance monitoring report shall contain the following:

(1) The monitoring report must include the following:

(A) A report indicating the nature and concentration of pollutants in the effluent that are limited by the categorical pretreatment standards.

(B) A record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (c)(4), except that the control authority may require more detailed reporting of flows if necessary to determine the industrial user's compliance with applicable regulations.

(2) When a pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the industrial user. At the discretion of the control authority and in consideration of factors including local high or low flow rates, holidays and budget cycles, the control authority may modify the months during which the reports required under subdivision (1) are to be submitted.

(3) The control authority may grant an industrial user subject to a categorical pretreatment standard a waiver from sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated thorough sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user.

This waiver is subject to the following conditions:

(A) The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility, provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

(B) The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five (5) years. The industrial user shall submit a new request for a waiver before the waiver can be granted for each subsequent control mechanism.

(C) In making a demonstration that a pollutant is not present, the industrial user shall provide data from at least one (1) sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with section 5.3 of this rule and include the certification statement in 40 CFR 403.6(a)(2)(ii)\*. Nondetectable sample results may be used

only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136, with the lowest minimum detection level for that pollutant, was used in the analysis.

(D) Any grant of a monitoring waiver by the control authority must be included as a condition in the industrial user's control mechanism. The reasons supporting the waiver and any information submitted by the industrial user in its request for the waiver must be maintained by the control authority for three (3) years after expiration of the waiver.

(E) Upon approval of the monitoring waiver and revision of the industrial user's control mechanism by the control authority, the industrial user shall certify on each report that there has been no increase in the pollutant in its waste stream due to activities of the industrial user. The statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of (list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1).".

(F) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the industrial user's operations, the industrial user shall immediately notify the control authority and comply with:

(i) the monitoring requirements of subdivisions (1) and (2); or

(ii) other more frequent monitoring requirements imposed by the control authority.

(G) This subdivision does not supersede certification processes and requirements established in **federal** categorical pretreatment standards at ~~327 IAC 5-18-10~~ **incorporated by reference in 327 IAC 5-2-1.5**, except as otherwise specified in the categorical pretreatment standard.

(4) Where the control authority has imposed mass limitations on industrial users as provided for by 40 CFR 403.6(d), the report required by this subsection must indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(5) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required by this subsection must contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report required by this subsection must include the industrial user's actual average production rate for the reporting period.

(g) All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 40 CFR 403.5(b)\*\*\*.

(h) Industrial users shall continue monitoring and analysis to demonstrate continued compliance, including the following:

(1) Except for nonsignificant categorical users, the reports required in subsections (b), (c), (e), (f), and (i) must contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein that are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the industrial user will not be required to submit the compliance certification required under subsections (c)(7) and (e). In addition, where the POTW collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(2) If sampling performed by an industrial user indicates a violation, the industrial user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority shall perform the repeat sampling and analysis unless it notifies the industrial user of the violation and requires the industrial user to perform the repeat analysis. Resampling is not required if the control authority performs sampling at the industrial user:

(A) at a frequency of at least once per month; or

(B) between the time when the initial sampling was conducted and the time when the industrial user or the control authority receives the results of this sampling.

(3) The reports required in subsections (b) through (e) and (i) must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, twenty-four (24) hour composite samples must be obtained through flow proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols, including appropriate preservation, specified in 40 CFR ~~Part~~ 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows:

(A) For cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field.

(B) For volatile organics and oil and grease, the samples may be composited in the laboratory.

(C) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

(4) For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in subsections (b) and (e), a minimum of four (4) grab samples must be used for:

(A) pH;

(B) cyanide;

(C) total phenols;

(D) oil and grease;

(E) sulfide; and

(F) volatile organic compounds;

for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the reports required by subsections (e) and (i), the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(5) All analyses must be performed in accordance with procedures established by the commissioner pursuant to 33 U.S.C. 1314(h) and contained in 40 CFR ~~Part~~ 136\*\*\*\* or with any other test procedures approved by the commissioner. Sampling must be performed in accordance with the techniques approved by the commissioner. Where:

(A) 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question; or

(B) the commissioner determines that the ~~Part~~ **40 CFR** 136 sampling and analytical techniques are inappropriate for the pollutant in question; sampling and analyses must be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.

(6) If an industrial user subject to the reporting requirement in subsection (f) or (i) monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision (5), the results of this monitoring must be included in the report.

(i) The reporting requirements for industrial users not subject to categorical pretreatment standards are as follows:

(1) Significant noncategorical industrial users shall submit to the control authority, at least once every six (6) months, on dates specified by the control authority, a description of the:

(A) nature;

(B) concentration; and

(C) flow;

of the pollutants required to be reported by the control authority.

(2) In cases where a local limit requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority to determine the compliance status of the industrial user. These reports must be based on sampling and analysis performed in the period covered by the report and in accordance with the techniques described in 40 CFR ~~Part~~ 136 and amendments thereto.

(3) This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

(j) Additionally, reporting of:

(1) spills into a POTW; or

(2) upsets in pretreatment facilities;

may be required of an industrial user by its control authority.

~~\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR 403.12 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR 403.6(a)(2)(ii) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR 403.5(b) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*\*\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR Part 136 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of~~

Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(Water Pollution Control Board; 327 IAC 5-16-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 291; filed Apr 3, 2009, 1:55 p.m.: 20090429-IR-327060156FRA)

SECTION 1. 327 IAC 5-16-5.3 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-16-5.3 Additional reporting requirements for POTWs and industrial users**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; **IC 13-18-3-15**; IC 13-18-4; IC 13-18-11

Sec. 5.3. (a) The reports required by 40 CFR 403.12 or 327 IAC 5-21-10 must be signed by one (1) of the following:

(1) A responsible corporate officer. As used in this section, "responsible corporate officer" means either of the following:

(A) A:

- (i) president;
- (ii) secretary;
- (iii) treasurer; or
- (iv) vice president;

of the corporation in charge of a principal business function or any other person who performs similar policymaking or decision making functions for the corporation.

(B) The manager of one (1) or more manufacturing, production, or operating facilities, provided the following:

(i) The manager is authorized to:

- (AA) make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations; and
- (BB) initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations.

(ii) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements.

(iii) Authority to sign has been assigned or delegated to the manager to sign documents in accordance with corporate procedures.

(2) A general partner or proprietor or manager, if the industrial user submitting the reports is a partnership or sole proprietorship, respectively.

(3) A duly authorized representative of the individual designated in either subdivision (1) or (2) if:

(A) the authorization:

- (i) is made in writing by the individual described in either subdivision (1) or (2); and
- (ii) specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(B) the written authorization is submitted to the control authority.

(4) If an authorization under subdivision (3) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of

subdivision (3) must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(b) An industrial user subject to the reporting requirements of section 5 of this rule and this section shall maintain records of the monitoring activities in accordance with 327 IAC 5-2-14, including documentation associated with best management practices.

These records must be made available, upon request, to the:

- (1) commissioner;
- (2) regional administrator; and
- (3) POTW to which the industrial user discharges its wastewater.

(c) A POTW to which reports are submitted by an industrial user under this section shall:

- (1) retain the reports, including documentation associated with best management practices, for a minimum of three (3) years; and
- (2) make the reports available for inspection and copying by the:

(A) commissioner; and

(B) regional administrator.

This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user, the operation of the approved POTW pretreatment, or when requested by the commissioner or the regional administrator.

(d) A report required by this section that relates to the actual operation of or discharge from a pretreatment facility must be prepared by or under the direction of a wastewater treatment plant operator certified under IC 13-18-11.

(e) A report required of a POTW by 40 CFR 403.12 must be signed by a responsible corporate officer, ranking elected official, or other duly authorized employee. The duly authorized employee shall be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be:

- (1) made in writing by the principal executive officer or ranking elected official; and
- (2) submitted to the approval authority prior to or together with the report being submitted.

If an employee is authorized to submit the reports, a copy of the written authorization designating the employee must be submitted to the commissioner.

(f) An industrial user who wishes to demonstrate the affirmative defense of upset for noncompliance with any pretreatment standard or requirement in 327 IAC 5-2 shall, as provided in 327 IAC 5-18-3, comply with the reporting requirements and conditions under section 6 of this rule.

(g) An industrial user shall report incidents of bypass or intent to bypass in accordance with section 7 of this rule.

(h) All industrial users shall promptly notify the:

- (1) control authority; and
- (2) POTW, if the POTW is not the control authority;

in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (j).

(i) A facility determined to be a nonsignificant categorical industrial user pursuant to 40 CFR 403.3(v)(2) shall annually submit a certification statement, signed in accordance with the signatory requirements in 40 CFR 403.12(l)\*. This certification must accompany an alternative report required by the control authority. The certification statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR \_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_, \_\_\_\_ to \_\_\_\_, \_\_\_\_ (months, days, year):

- (a) The facility described as \_\_\_\_ (facility name) met the definition of a nonsignificant categorical industrial user as described in 40 CFR 403.3(v)(2);
- (b) the facility complied with all applicable pretreatment standards and requirements during this reporting period; and
- (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information."

(j) An industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and the commissioner in writing of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. The notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge, for example, continuous, batch, or other. If the industrial user discharges more than one hundred (100) kilograms of the waste per calendar month to the POTW, the notification must also contain the following information to the extent the information is known and readily available to the industrial user:

- (1) An identification of the hazardous constituents contained in the wastes.
- (2) An estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month.
- (3) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

All notifications must occur not later than one hundred eighty (180) days after the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification not later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j)\*\*. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b), 40 CFR 403.12(d), and 40 CFR 403.12(e).

(k) Dischargers are exempt from the requirements of this subsection and subsections (j) and (l) during a calendar month in which they discharge not more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e), requires a one (1) time notification.

(l) Subsequent months, during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(m) In the case of any notification made under subsections (j) through (l), the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(n) The control authority that chooses to receive electronic documents shall satisfy the requirements of 40 CFR Part 3\*\*\*, electronic reporting.

~~\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR 403.12(l) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana~~

Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

~~\*\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR 403.12(j) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*\*Notwithstanding 327 IAC 5-16-1(d) [section 1(d) of this rule], the July 1, 2007, version of 40 CFR Part 3 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

*(Water Pollution Control Board; 327 IAC 5-16-5.3; filed Apr 3, 2009, 1:55 p.m.: 20090429-IR-327060156FRA)*

SECTION 1. 327 IAC 5-18-4 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-18-4 National categorical pretreatment standards**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 4-22-2; IC 13-11-2; IC 13-13-5-1; **IC 13-18-3-15**; IC 13-18-4

Sec. 4. (a) General provisions for the categorical pretreatment standards are as follows:

(1) Unless specifically noted otherwise, categorical pretreatment standards are:

- (A) enforceable by the commissioner against an industrial user upon the incorporation by reference of the standards in section 10 of this rule in accordance with IC 4-22-2; and
- (B) in addition to all applicable pretreatment standards and requirements in the pretreatment rules.

(2) Irrespective of whether a particular categorical pretreatment standard has been incorporated by reference in section 10 of this rule, the commissioner may do the following:

- (A) Make certifications regarding the applicability of that standard under subsection (b).
- (B) Deny or recommend to EPA the approval of any request for a fundamentally different factors variance from that standard in accordance with section 5 of this rule.
- (C) Recommend to the EPA the approval or disapproval of any application for calculation of that standard on a net basis in accordance with section 6 of this rule.

(b) The requirements concerning a request for a subcategory determination are as follows:

(1) Within sixty (60) days after the effective date of a categorical pretreatment standard for a subcategory under which an industrial user may be included, the existing industrial user or POTW may request that the regional administrator or the commissioner provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation that may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operations. A new source must request this certification prior to commencing discharge. If a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of the submission. The industrial user may provide written comments to the commissioner within thirty (30) days of receipt of notification from the POTW about the POTW's request for certification.

(2) A request for certification must contain the following:

- (A) A description of the subcategories that may be applicable.
- (B) A statement citing evidence and reasons why a particular subcategory applies and why others are not applicable.

Any person signing the application statement submitted under this section shall make the signed certification, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(3) A determination will be made on each request for certification in accordance with the procedures specified in 40 CFR 403.6(a)\*.

(c) Compliance with new categorical standards shall be in accordance with the following:

(1) Except where an existing source meets the definition of a new source as defined under 327 IAC 5-17-13, an existing source with categorical pretreatment standards, including an existing source that:

(A) becomes an industrial user subsequent to promulgation of an applicable categorical pretreatment standard; and

(B) is thereafter considered an existing industrial user;

shall achieve compliance within three (3) years of the date the new standard is promulgated by EPA, unless a shorter compliance time is specified in the standard.

(2) A new source shall:

(A) install;

(B) have in operating condition; and

(C) start up;

all pollution control equipment required to comply with all pretreatment standards and requirements in this rule before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, a new source must meet all pretreatment standards and requirements in this rule.

(d) Concentration and mass limits are determined by the following:

(1) If the pollutant discharge limit for a categorical pretreatment standard is expressed as a concentration limit, the concentration limit shall apply only to the effluent of the process regulated by the standard or as otherwise specified by the standard. Wherever possible:

(A) an equivalent mass limit will be provided as an alternative to the standard; and

(B) it may be applied by the commissioner or a POTW with an approved POTW pretreatment program.

(2) If a pollutant discharge limit in a categorical pretreatment standard is expressed only as mass of pollutant per unit of production, the control authority may convert the limit to an equivalent limitation expressed either as mass of pollutant discharged per day or effluent concentration for the purpose of calculating the effluent limitation applicable to an individual industrial user.

(3) A control authority calculating an equivalent mass-per-day limitation according to subdivision (2) shall not calculate the limitation by multiplying the limit in the standard by the industrial user's production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For a new source, actual production shall be estimated using projected production.

(4) A control authority calculating an equivalent concentration limitation according to subdivision (2) shall calculate the limitation by dividing the mass limitation derived according to subdivision (3) by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate must be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during a representative year.

(e) When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all of the following conditions:

(1) To be eligible for equivalent mass limits, the industrial user shall:

(A) employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(B) currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard and not have used dilution as a substitute for treatment;

(C) provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate, in which both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(D) not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(E) have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

(2) An industrial user subject to equivalent mass limits shall do the following:

(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits.

(B) Continue to do the following:

(i) Record the facility's:

(AA) flow rates through the use of a continuous effluent flow monitoring device; and

(BB) production rates and notify the control authority whenever production rates are expected to vary by more than twenty percent (20%) from its baseline production rates determined in subdivision (1)(C); upon notification the control authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility.

(ii) Employ the same or comparable water conservation methods and technologies as those implemented under subdivision(1)(A) so long as it discharges under an equivalent mass limit.

(f) A control authority that chooses to establish equivalent mass limits under subsection (e):

(1) shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process or processes of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable

categorical pretreatment standard and the appropriate unit conversion factor;

(2) upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility;

(3) may retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user:

(A) meets the actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies;

(B) meets the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment under this section; and

(C) is in compliance with 40 CFR 403.17, regarding the prohibition of bypass; and

(4) may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

(g) The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions:

(1) When converting mass to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455.

(2) There must be documentation that dilution is not being substituted for treatment as prohibited by subsection (i).

(h) The application of a limitation for a categorical pretreatment standard shall be in accordance with the following:

(1) An equivalent limitation calculated in accordance with subsections (d)(3), (d)(4), and (e) is deemed pretreatment standards for the purposes of Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)) and the pretreatment rules. The control authority shall:

(A) document how the equivalent limits were derived; and

(B) make this information publicly available.

Once incorporated into its control mechanism, the industrial user shall comply with an equivalent limitation in lieu of a promulgated categorical standard from which the equivalent limitation was derived.

(2) Many categorical pretreatment standards specify:

(A) one (1) limit for calculating a maximum daily discharge limitation; and

(B) a second limit for calculating a maximum monthly average or four (4) day average limitation.

If such a standard is being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(3) Any industrial user operating under a control mechanism incorporating an equivalent mass or concentration limit calculated from a production based standard shall notify the control authority within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limit in its control mechanism that was based on the original estimate of the long-term average production rate.

(i) Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user shall increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with any pretreatment standard or requirement. An unauthorized attempt by an industrial user to dilute a regulated discharge shall be cause for the control authority to impose the mass limits set forth in the categorical standard.

~~\*Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.6(a) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

*(Water Pollution Control Board; 327 IAC 5-18-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 298; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936; filed Apr 3, 2009, 1:55 p.m.: 20090429-IR-327060156FRA)*

SECTION 1. 327 IAC 5-18-5 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 5-18-5 Variance from a categorical pretreatment standard for fundamentally different factors**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; **IC 13-18-3-15**; IC 13-18-4

Sec. 5. (a) The requirements for requesting a variance from a categorical pretreatment standard for fundamentally different factors are as follows:

(1) Any interested person may request a fundamentally different factors variance under this section for the following reasons:

(A) Factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that industrial user.

(B) The existence of the differing factors justifies a different discharge limit from that specified in the applicable categorical pretreatment standard.

(2) Requests for a variance and supporting evidence must be submitted in writing to the commissioner within one hundred eighty (180) days after the date when a categorical pretreatment standard is published in the Federal Register. If an industrial user has requested a categorical determination under section 4(b) of this rule, the industrial user may defer submission of a variance request under this section until no later than thirty (30) days after a final decision has been made on the categorical determination under 40 CFR 403.6(a)(4).

(3) A written request for a fundamentally different factors variance (FDFV) must include the following:

(A) The name and address of the person making the request.

(B) Identification of the interest of the requester, which is affected by the categorical pretreatment standard, for which the variance is requested.

(C) Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested.

(D) Identification of the categorical pretreatment standards that are applicable to the industrial user.

(E) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought.

(F) The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in clause (E).

(G) A description of the industrial user's existing water pollution control facilities.

(H) A schematic flow representation of the industrial user's water system, including water supply, process wastewater systems, and points of discharge.

(I) A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.

(b) The commissioner shall act upon a FDFV request according to the following:

(1) A decision on a FDFV request according to subsection (a) shall be made in accordance with the criteria and standards set forth in 40 CFR 403.13<sup>\*</sup>. A variance shall not be granted if a proposed alternative discharge limit would result in a violation of prohibitive discharge standards in section 2 of this rule.

(2) When the commissioner makes a tentative decision on a FDFV request the commissioner shall provide a public notice of receipt of the request, opportunity to review the submission, and opportunity to comment. The public notice shall meet the following:

(A) Be circulated in a manner designed to inform interested and potentially interested persons of the request. Public notice shall include mailing notices to the following:

(i) The POTW that will receive the discharge from the industrial user requesting the variance.

- (ii) Adjoining states whose waters may be affected.
  - (iii) Planning agencies, federal and state fish agencies, and shellfish and wildlife resource agencies designated in Section 208 of the Clean Water Act (33 U.S.C. 1288).
  - (iv) Any other person or group that has requested individual notice.
- (B) Provide for a comment period of not less than thirty (30) days duration following the date of the public notice during which time interested persons may review the request and submit written comments on the request.
- (3) The commissioner shall make a determination on the request for a FDFV taking into consideration any comments received during the comment period. If the commissioner denies the request, the commissioner's decision shall be final and notice thereof shall be provided to the following:
- (A) The requester.
  - (B) The industrial user for which the variance was requested, if different from the requester of clause (A).
  - (C) The POTW intended to receive the industrial user's discharge that was the subject of the FDFV request.
  - (D) All persons who submitted comments on the request.
- (4) If the commissioner concludes that fundamentally different factors do exist, the commissioner shall forward the request and a recommendation that a variance be approved to the EPA water management division director for a final determination pursuant to 40 CFR 403.13.
- (5) The commissioner will act only on variances that contain all of the information required. The commissioner shall notify a person who has made an incomplete submission that the request is deficient and, unless the time period is extended, the person will be given a maximum of thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the commissioner, the request for variance shall be denied.

~~\*40 CFR 403.13 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

*(Water Pollution Control Board; 327 IAC 5-18-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 300; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)*

SECTION 1. 327 IAC 15-1-1 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 15-1-1 Purpose**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 1. The purpose of this article is to establish NPDES **administrative** general permit rules **authority** for certain classes or categories of point source discharges , **except those covered by individual permits, within a geographical area within the state.** ~~by prescribing the policies, procedures, and technical criteria to operate and discharge under the requirements of a NPDES general permit rule. Compliance with all requirements of applicable general permit rules may obviate the need for an individual NPDES permit issued under 327 IAC 5. A facility can operate under an individual NPDES permit and one (1) or more applicable general permit rules.~~

*(Water Pollution Control Board; 327 IAC 15-1-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 15-1-2 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 15-1-2 Definitions**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 2. ~~In addition to The definitions contained in IC 13-7-1 [IC 13-7 was repealed by P.L. 1-1996, SECTION 99, effective July 1, 1996.], IC 13-1-3-1.5 [IC 13-1 was repealed by P.L. 1-1996, SECTION 99, effective July 1, 1996.], 327 IAC 1, and 327 IAC 5, as amended, the following definitions~~ **IC 13-11-2, 327 IAC 5-1.5, 40 CFR 122.26(b), and 40 CFR 403.3** apply throughout this article.

(1) ~~"Existing discharge" means any point source discharge of process or storm water which occurs either continuously or intermittently from a property at the time coverage under an individual NPDES permit is being sought.~~

(2) ~~"General permit rule boundary" means an area based upon existing geographic or political boundaries indicating the area within which a facility affected by this article is located.~~

(3) ~~"Individual NPDES permit" means a NPDES permit issued to one (1) facility which contains requirements specific to that facility.~~

(4) ~~"Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit and includes information as required under 327 IAC 15-3 and the applicable general permit rule.~~

(5) ~~"Storm water" means water resulting from rain, melting or melted snow, hail, or sleet.~~

*(Water Pollution Control Board; 327 IAC 15-1-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 15-1-3 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 15-1-3 Department request for data**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 3. (a) **The commissioner may, in a general permit issued under this article, require** any person, ~~as defined at IC 13-7-1-17 IC 13-11-2-158(a), who~~ is subject to this article ~~shall~~ **to**:

(1) establish and maintain such records;

(2) make such reports;

(3) install, use, and maintain such monitoring equipment or methods (including, where appropriate, biomonitoring methods);

(4) sample such effluents, internal wastestreams where appropriate, or other material; and

(5) provide such other data, including, but not limited to, raw materials, catalysts, intermediate products, byproducts, production rates, and related process information;

at such locations, at such times, and in such a manner, as the commissioner may reasonably prescribe.

(b) Sampling of internal wastestreams under subsection (a)(4) and the provisions of data under subsection (a)(5) shall not be required by the commissioner unless:

(1) such data are reasonably expected to facilitate the identification or quantification of pollutants which may be released to the environment from facilities operated by the person to whom the request is made, and the identification or quantification of such pollutants could not reasonably be made by the commissioner in the absence of the requested information; or

(2) such data are necessary to properly control wastewater treatment processes.

*(Water Pollution Control Board; 327 IAC 15-1-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 15-1-4 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 15-1-4 Enforcement**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 4. This article shall be enforced ~~through the provisions of IC 13-7-10-5, IC 13-7-11, or IC 13-7-12, or any combination thereof, as appropriate~~ **as provided in IC 13-30**. ~~Penalties for violation of this article shall be governed by IC 13-7-13.~~

*(Water Pollution Control Board; 327 IAC 15-1-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 1. 327 IAC 15-2-1 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 15-2-1 Purpose and scope**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 1. This rule defines the basic programmatic requirements of the **NPDES administrative** general permit rule program to be administered by the commissioner consistent with NPDES requirements under the **Federal Clean Water Act**, as defined at ~~IC 13-1-4-1, IC 13-7-1-10, IC 13-11-2-79 and 327 IAC 5.~~

*(Water Pollution Control Board; 327 IAC 15-2-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16)*

SECTION 1. 327 IAC 15-2-2 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 15-2-2 NPDES general permit requirements**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 2. (a) The commissioner may regulate the following discharges under **an NPDES administrative** general permit rules:

- (1) ~~Point source discharges of Storm water~~ **discharges** associated with industrial activity, as defined in 40 CFR 122.26(b)(14), ~~as published in the Federal Register on November 16, 1990, consistent with the EPA 2008 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, as modified, effective May 27, 2009.~~
- (2) **Storm water discharges associated with construction activity consistent with the EPA 2012 NPDES General Permit for Discharges from Construction Activities effective February 16, 2012.**
- (3) **Small municipal separate storm sewer system discharges consistent with EPA's general permit requirements for small municipal separate storm sewer systems (MS4s) in 40 CFR 122, Subpart B.**
- (4) **Discharges of pesticides to waters of the state consistent with EPA's NPDES Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides, effective October 31, 2011.**
- (5) **Discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district for which an operating permit has been issued pursuant to IC 13-18-12-9.**

**(6) Such other categories or subcategories of discharges or sludge use or disposal practices or point sources facilities, sites and entities** operating within the state that:

- (A) involve the same or substantially similar types of operations;
- (B) discharge the same types of wastes;
- (C) require the same effluent limitations or operating conditions; and
- (D) require the same or similar monitoring requirements;

**consistent with the federal NPDES permit program administered by the EPA.**

(b) The commissioner may determine that an individual permit must be obtained under section 9 of this rule. ~~Any person to whom this article applies may avoid compliance with this article by obtaining an individual NPDES permit.~~

(c) ~~Each general permit rule shall be applicable to persons meeting the criteria of subsection (a) existing within specific boundaries designated by the commissioner in accordance with the following:~~

~~(1) A general permit rule boundary shall correspond with existing geographic or political boundaries such as:~~

- ~~(A) designated planning areas under the Federal Act;~~
- ~~(B) regional sewer districts or sewer authorities;~~
- ~~(C) city, county, or state political boundaries;~~
- ~~(D) state highway systems;~~
- ~~(E) standard metropolitan statistical areas;~~
- ~~(F) urbanized areas as defined by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or~~
- ~~(G) any other appropriate divisions or combinations of the boundaries in this subdivision which will encompass the sources subject to the general permit rule.~~

~~(2) Any designation of any general permit rule boundary is subject to reclassification by the commissioner:~~

- ~~(A) upon revision of a general permit rule;~~
- ~~(B) if individual NPDES permits have been issued to all persons in a category of point sources; or~~
- ~~(C) as necessary to address water quality problems effectively.~~ **issued by the commissioner must meet the criteria for general permits in 40 CFR 122.28.**

**(d) As provided in 40 CFR 122.28(b)(2)(v), the commissioner may authorize a person to discharge under a general permit without submitting a notice of intent if the commissioner finds that a notice of intent would be inappropriate. However, this provision does not apply to discharges from:**

- (1) publicly owned treatment works;**
- (2) combined sewer overflows;**
- (3) municipal separate storm sewer systems;**
- (4) primary industrial facilities; and**
- (5) storm water discharges associated with industrial activity.**

*(Water Pollution Control Board; 327 IAC 15-2-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65)*

SECTION 1. 327 IAC 15-2-2.3 IS ADDED TO READ AS FOLLOWS:

**327 IAC 15-2-2.3 Public notice and comment**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15;** IC 13-18-4

**Sec. 2.3. The commissioner shall make draft general permits available for public comment for no less than thirty (30) days, consistent with section 402 of the Clean Water Act (33 U.S.C. 1342).**

(Water Pollution Control Board; 327 IAC 15-2-2.3)

SECTION 1. 327 IAC 15-2-3 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 15-2-3 NPDES general permit applicability requirements**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 3. (a) A general permit ~~rule~~ may regulate all designated categories of ~~point sources~~ **discharges** for which a general permit ~~rule~~ exists except:

- (1) as provided under section 6 or 9 of this rule or the applicable general permit ~~rule~~; and
- (2) ~~point source~~ discharges meeting the applicability requirements of a general permit ~~rule~~, who are already subject to individual NPDES permits prior to the effective date of a general permit ~~rule~~.

(b) Persons excluded from general permit ~~rule~~ regulation solely because they have an existing individual NPDES permit may request to be regulated under a general permit ~~rule~~ and may request that the individual NPDES permit be revoked or modified to remove the ~~point source discharge~~ from the existing permit. Upon revocation or expiration of the individual NPDES permit, the general permit ~~rule~~ shall apply to such ~~point source~~ discharges regulated under this article. This allowance to change from an individual NPDES permit to a general NPDES permit does not apply to municipal separate storm sewer system permittees who were issued an individual NPDES permit before January 1, 2000.

(c) A person that holds an individual NPDES permit may have discharges regulated under an applicable general permit ~~rule~~ if such discharges are not addressed in the individual permit.

(Water Pollution Control Board; 327 IAC 15-2-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830)

SECTION 1. 327 IAC 15-2-5 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 15-2-5 Notice of intent ~~letter~~**

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 5. (a) **Except as provided in 40 CFR 122.28(b)(2)(v),** any person ~~subject to the requirements of this article seeking to obtain an NPDES general permit~~ shall submit a ~~NOI letter~~ **notice of intent** that ~~complies with this section, 327 IAC 15-3, and in accordance with the additional requirements in any of the applicable general permit rule.~~

(b) A ~~NOI letter~~ **notice of intent** shall be submitted to the commissioner by the time specified under ~~327 IAC 15-3 or the time indicated in the applicable general permit rule.~~

(c) ~~The person responsible for the operation of the facility from which a point source discharge of pollutants and/or storm water occurs must submit a NOI letter.~~

(Water Pollution Control Board; 327 IAC 15-2-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17)

**327 IAC 15-2-6 Exclusions**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 6. (a) Except as provided in subsection (b), an individual NPDES permit issued under 327 IAC 5 is required for a discharge:

- (1) to a receiving stream identified as an:
  - ~~(1)~~ **(A)** outstanding state resource water **as described in:**

- (i) **327 IAC 2-1-11(b);**
- (ii) **327 IAC 2-1.3-3(d); or**
- (iii) **327 IAC 2-1.5-19(b); or**
- ~~(2) exceptional use water;~~
- ~~(3) (B) outstanding national resource water as defined under 327 IAC 2-1-2(3), 327 IAC 2-1-11(b), or designated in 327 IAC 2-1.5-4; or~~
- (2) which would significantly lower the water quality as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of the point source discharge.**

(b) A discharge to an outstanding national resource water, outstanding state resource water, ~~or exceptional use water~~ **that consists only of storm water** may be permitted under ~~327 IAC 15-5, 327 IAC 15-6, or 327 IAC 15-13~~ **this article** if the commissioner determines the discharge will not significantly lower the water quality as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of that ~~point source~~ discharge.

*(Water Pollution Control Board; 327 IAC 15-2-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830)*

SECTION 1. 327 IAC 15-2-9 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 15-2-9 Special requirements for NPDES general permits**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 4-21.5; IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 9. ~~(a) If a general permit rule is amended, all persons regulated by the affected general permit rule must be notified of the amendment by the commissioner. Those persons notified by the commissioner under this subsection shall:~~

- ~~(1) apply for an individual NPDES permit under 327 IAC 5-3; or~~
- ~~(2) submit a complete NOI letter containing the information required in 327 IAC 15-3-2 and the amended rule;~~

~~within ninety (90) days after receipt of the notice from the commissioner.~~

~~(b) (a) The commissioner may require any person either with an existing discharge subject to the requirements of this article or who is proposing a discharge that would otherwise be subject to the requirements of this article to apply for and obtain an individual NPDES permit if one (1) of the six (6) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include any of the following occurs:~~

- (1) The applicable requirements contained in this article are not adequate to ensure compliance with:
  - (A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or
  - (B) the provisions that implement water quality standards contained in 327 IAC 5.
- (2) The person is not in compliance with the terms and conditions of ~~the an NPDES general permit rule.~~
- (3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the ~~point source~~ **discharge.**
- (4) Effluent limitations guidelines that are more stringent than the requirements in the general permit ~~rule~~ are subsequently promulgated for ~~point sources~~ **discharges** regulated by the general permit ~~rule.~~
- (5) A water quality management plan containing more stringent requirements applicable to such ~~point source~~ **discharges** is approved.

(6) Circumstances have changed since the activity regulated under this article began so that the discharger is no longer appropriately controlled under the general permit rule or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

**(7) The water is identified as impaired pursuant to section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)) and listed at <http://www.in.gov/idem/nps/2647.htm>.**

**(8) The commissioner has revoked the person's coverage under the general permit.**

**Interested persons may petition the commissioner to take action under this subsection.**

~~(c)~~ **(b)** If, under subsection (b), the commissioner requires an individual NPDES permit, pursuant to 327 IAC 5-3, the commissioner shall notify the person in writing that an individual NPDES permit application is required. This notice shall be issued pursuant to IC 4-21.5 and shall also include the following:

(1) A brief statement of the reasons for this decision.

(2) An application form.

(3) A statement setting a time for the person to file the application.

(4) A statement that on the effective date of the individual NPDES permit, the general permit rule, as it applies to the individual person, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

~~(d)~~ **(c)** A person having financial responsibility or operational control for a facility, project site, or municipal separate storm sewer system area and the associated storm water discharges, that meets the applicability requirements of the general permit rule and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 as published in the Federal Register on November 16, 1990, and 327 IAC 5-3 if the operator seeks to cover the discharge under an individual permit.

~~(e) On the effective date of an individual NPDES permit that is issued to a person regulated under this article, this article no longer applies to that person.~~

~~(f) Persons with a discharge meeting all the applicability criteria of more than one (1) general permit rule shall comply with all applicable general permit rules.~~

*(Water Pollution Control Board; 327 IAC 15-2-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831)*

SECTION 1. 327 IAC 15-2-10 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 15-2-10 Prohibitions**

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4

Sec. 10. No general permit rule shall be promulgated and issued where the terms and conditions of the permit rule do not comply with the applicable guidelines and requirements of:

**(1) the Federal Clean Water Act; or**

**(2) effective regulations promulgated under the Federal Clean Water Act;**

**(3) 327 IAC 2;**

**(4) 327 IAC 5; or**

**(5) this article.**

*(Water Pollution Control Board; 327 IAC 15-2-10; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18)*

SECTION 1. 327 IAC 15-3.5 IS ADDED TO READ AS FOLLOWS:

### **Rule 3.5. On-Site Residential Sewage Discharging Disposal Systems**

#### **327 IAC 15-3.5-1 On-site residential sewage discharging disposal systems**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: **IC 13-18-3-15**; IC 13-18-4; IC 13-18-12-9

**Sec. 1.** This rule applies to on-site residential sewage discharging disposal systems located within the Allen County on-site waste management district that have been installed to repair or replace a sewage disposal system that fails to meet public health and environmental standards and for which an operating permit has been issued pursuant to IC 13-18-12-9.

*(Water Pollution Control Board; 327 IAC 15-3.5-1)*

#### **327 IAC 15-3.5-2 Definitions**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-11-2; **IC 13-18-3-15**; IC 13-18-4; IC 36-11

**Sec. 2.** In addition to the definitions contained in IC 13-11-2, 327 IAC 5, and 327 IAC 15-1.5, the following definitions apply throughout this rule:

- (1) "CBOD5" means Five (5)-day Carbonaceous Biochemical Oxygen Demand.
- (2) "District" means the Allen County on-site waste management district established under IC 36-11.
- (3) "E. coli" means Escherichia coli bacteria.
- (4) "On-site residential sewage discharging disposal system" means a sewage disposal system that:
  - (A) is located on a site with and serves a one (1) or two (2) family residence; and
  - (B) discharges effluent off-site.
- (5) "Permittee" means, for purposes of this rule, the owner of an on-site residential sewage discharging disposal system and the district in subdivision (2).
- (6) "Sewage disposal system" means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:
  - (A) store;
  - (B) treat;
  - (C) make inoffensive; or
  - (D) dispose of;human excrement or liquid carrying wastes of a domestic nature.
- (7) "TSS" means total suspended solids.

*(Water Pollution Control Board; 327 IAC 15-3.5-2)*

#### **327 IAC 15-3.5-3 Notice of intent**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: **IC 13-18-3-15**; IC 13-18-4; IC 13-18-12-9; IC 13-18-20-12

**Sec. 3. (a)** Except as provided in subsection (f), the owner of property upon which an on-site residential sewage discharging disposal system subject to this rule is located shall submit to the district a request for inclusion into the district and coverage under the on-site residential sewage discharging disposal system general permit. The request shall include the following:

- (1) Name and address of the owner and location of the property for which the request is submitted, if different than the mailing address.
- (2) A copy of the operating permit issued by the local health department with jurisdiction over the system as provided in section 7 of this rule, pursuant to IC 13-18-12-9(d).

(3) A statement that the person named under subdivision (1) wishes to be covered by the general permit.

(4) Signature of the person named under subdivision (1).

(b) If an on-site residential sewage discharging disposal system serves more than one (1) home, each homeowner served by the system shall submit the information required in subsection (a).

(c) If there is a change of ownership of the property upon which an on-site residential sewage discharging disposal system is located, the following must be accomplished in accordance with any applicable district requirements:

(1) The seller of the property shall submit:

(A) a notice to the district reporting the change in property ownership; and

(B) a written statement to the buyer of the property explaining the obligations, including the requirements of the general permit, of owning an on-site residential sewage discharging disposal system.

(2) The buyer of the property shall submit to the district a statement requesting to remain subject to coverage under the general permit.

(d) The district shall submit a notice of intent in accordance with 327 IAC 15-2-5 and 327 IAC 15-3.

(e) In addition to the information required in 327 IAC 15-2-3 and 327 IAC 15-3, the notice of intent shall include the following:

(1) Names and mailing addresses of all persons requesting inclusion in the district.

(2) Map indicating the following:

(A) The location of each on-site residential sewage discharging disposal system within the district.

(B) The location of any pond or lake within two (2) miles downstream of any on-site residential sewage discharging disposal system within the district.

(3) Names of the receiving streams into which the on-site residential sewage discharging disposal systems will discharge.

(f) For an on-site residential sewage discharging disposal system installed at a residence that was constructed after July 1, 2002, because of failure of the original on-site non-discharging sewage disposal system, the following additional requirements apply:

(1) The owner of the system shall submit all information required under this section to both the district and IDEM, including a copy of the operating permit issued by the local health department, prior to discharge from the system.

(2) The owner shall also submit to IDEM a system failure report, on a form provided by the department, that summarizes:

(A) the known reasons for failure of the system; and

(B) other technologies for repair or options for managing the on-site waste that were considered by the local health department prior to issuing an operating permit.

(3) The owner may not discharge from the system until receiving approval from the department. If the department does not approve the operation within fifteen (15) days of receipt of the notice of intent, the system is approved for purposes of this rule.

(g) The notice of intent must be signed by the head of the governing body of the district.

*(Water Pollution Control Board; 327 IAC 15-3.5-3)*

#### **327 IAC 15-3.5-4 Deadline for submission of a notice of intent and update requirements**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: **IC 13-18-3-15**; IC 13-18-4

**Sec. 4. (a)** Any person requesting inclusion in the district and coverage under this rule shall submit the request for inclusion to the district within thirty (30) days of receipt of the operating permit issued by the local health department. However, a person described in section 3(f) of this rule shall submit the notice of intent required under section 3 of this rule to the district and IDEM at least fifteen (15) days prior to discharging.

**(b)** The district shall submit the notice of intent to the department within ninety (90) days of the effective date of this rule.

**(c)** The district shall provide written updates to the department every three (3) months after submission of the initial notice of intent. The updates shall include the following:

**(1)** Updated list of names and mailing addresses of district members, including the following:

**(A)** Additional persons included in the district and requesting coverage under the general permit since the last update.

**(B)** Changes in ownership of any systems, including the names of the new and former owners.

**(2)** Updated map containing the most recent information required under section 3(e)(2) of this rule.

**(d)** The update required by subsection (c) must be signed by the head of the governing body of the district.

*(Water Pollution Control Board; 327 IAC 15-3.5-4)*

#### **327 IAC 15-3.5-5 Standard conditions**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: **IC 13-18-3-15**; IC 13-18-4

**Sec. 5. (a)** The standard conditions for a NPDES permit under 327 IAC 5 and the standard conditions for an NPDES general permit under this article apply to an on-site residential sewage discharging disposal system general permit.

**(b)** The district shall maintain the following records within the district office and make them available for inspection:

**(1)** Monitoring reports required under the an on-site residential sewage discharging disposal system general permit for each system within the district.

**(2)** A copy of the operating permit issued by the local health department for each system within the district.

**(3)** Signed requests for inclusion in the district and coverage under the general permit for each system within the district.

*(Water Pollution Control Board; 327 IAC 15-3.5-5)*

#### **327 IAC 15-3.5-6 Inspection**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-14-10; IC 13-15-7; IC 13-18-3; IC 13-18-4; IC 13-30; IC 36-11-2-1; IC 36-11-5

**Sec. 6.** In addition to the requirements of 327 IAC 5-2-8(8), the district shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter the district office and have access to and copy any records that must be kept under the conditions of the general permit.

*(Water Pollution Control Board; 327 IAC 15-3.5-6)*

SECTION 2. THE FOLLOWING ARE REPEALED: 327 IAC 5-1.5-62; 327 IAC 5-2-4; 327 IAC 5-18-10; 327 IAC 15-2-4; 327 IAC 15-2-7; 327 IAC 15-2-8; 327 IAC 15-2-11; 327 IAC 15-3; 327 IAC 15-4; 327 IAC 15-5; 327 IAC 15-6; 327 IAC 15-7; 327 IAC 15-8; 327 IAC 15-9; 327 IAC 15-10; 327 IAC 15-11; 327 IAC 15-12; 327 IAC 15-13; 327 IAC 15-14.

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